

# ZONING BOARD OF ADJUSTMENT

September 28, 2021



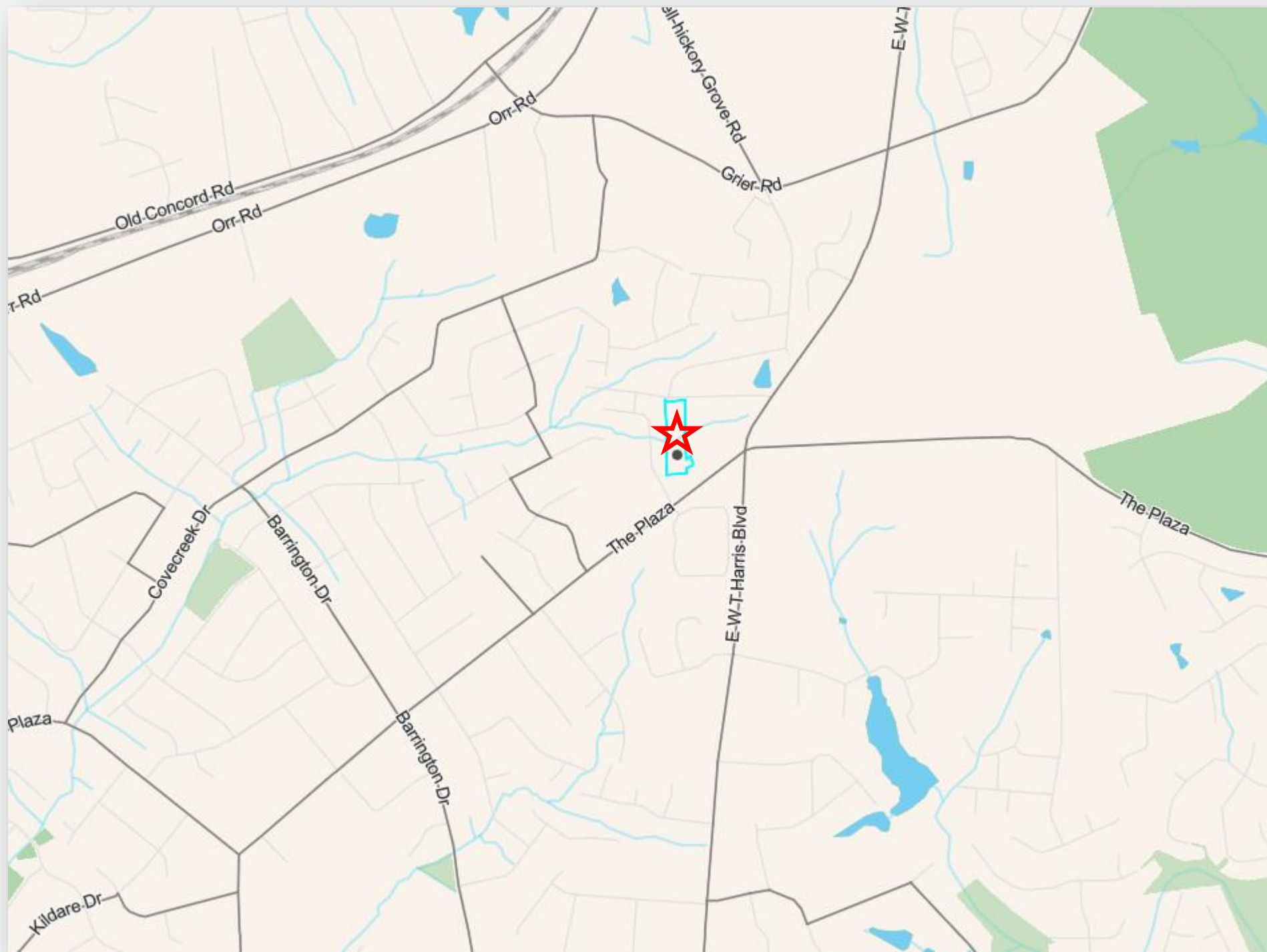
CASE NO.  
2021-090  
COMMERCIAL  
ACCESS/  
FRONTAGE  
VARIANCE

***Charlotte Chin Christian Church (represented by David W. Murray, The Odom Firm, PLLC) for property located at 7115 The Plaza, tax parcel 097-031-04.***

Requesting a variance from the requirement that a medium sized religious institution be located on a lot with frontage on a minor or major thoroughfare.

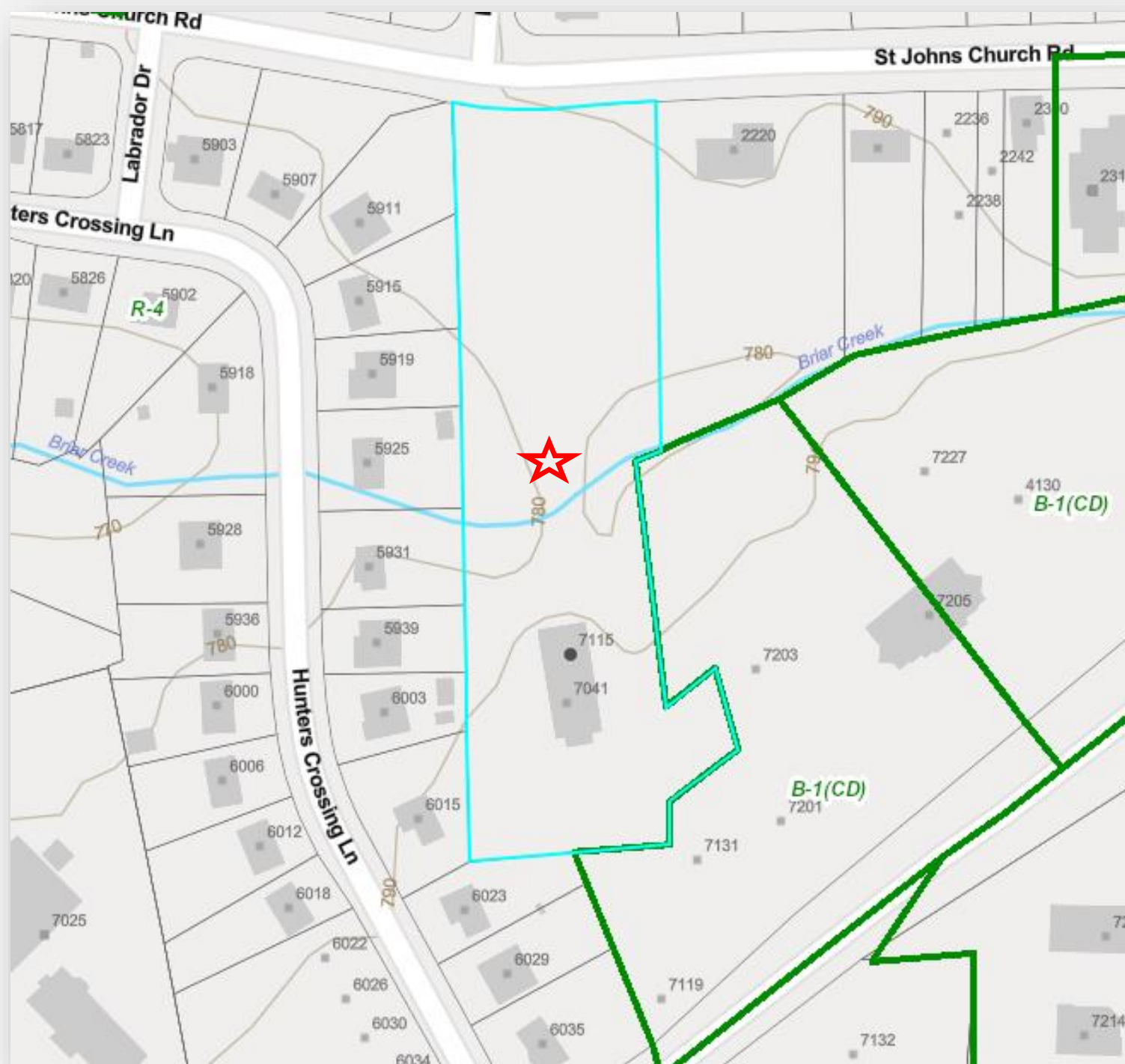
GOVERNMENT  
EXHIBIT  
2021-090  
#1

VICINITY MAP



GOVERNMENT  
EXHIBIT  
2021-090  
#2

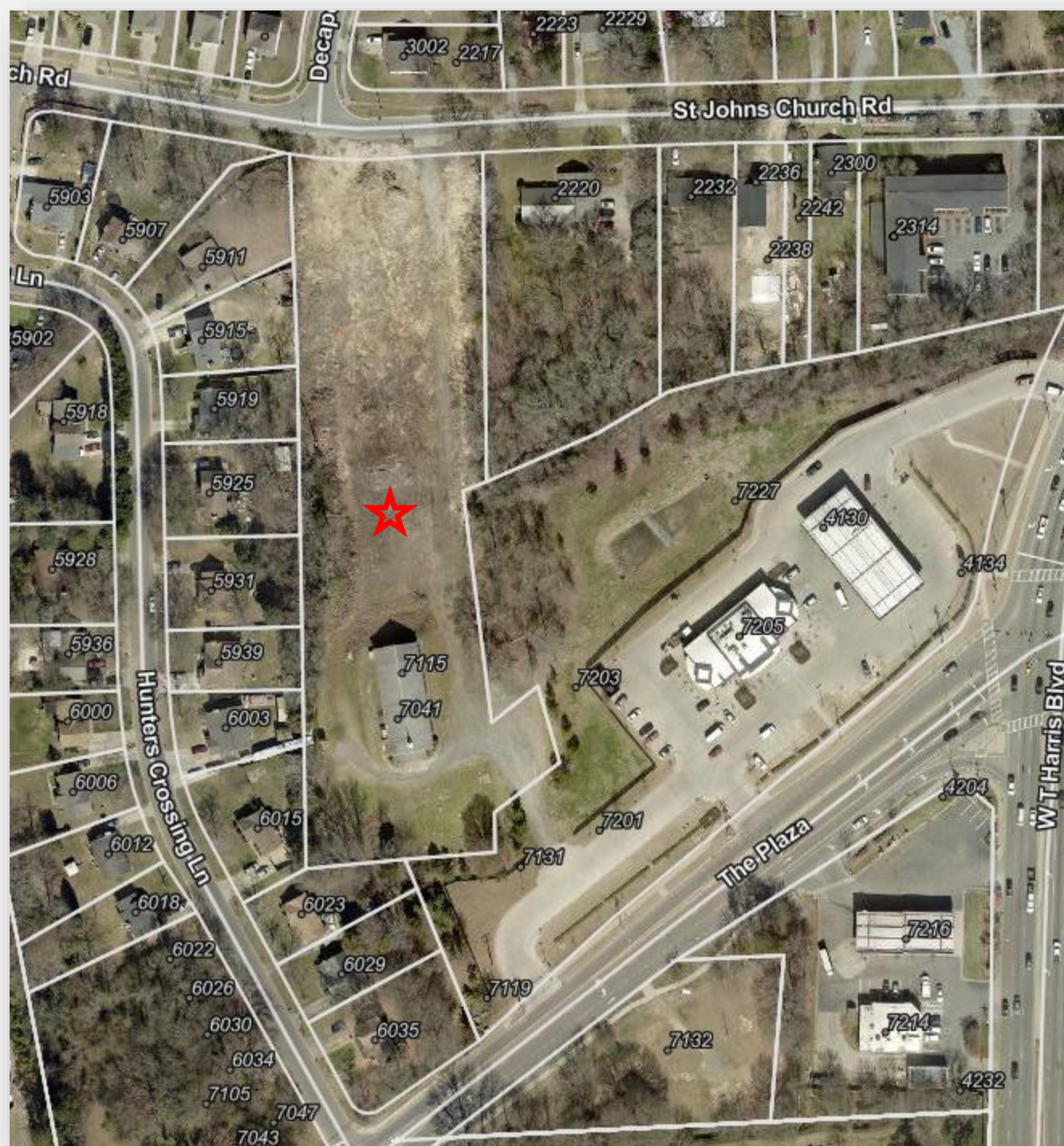
ZONING MAP



Zoning  
R-4 (Single Family)

GOVERNMENT  
EXHIBIT  
2021-090  
#3  
  
AERIAL MAP

GOVERNMENT  
EXHIBIT  
2021-090  
#3  
  
AERIAL MAP

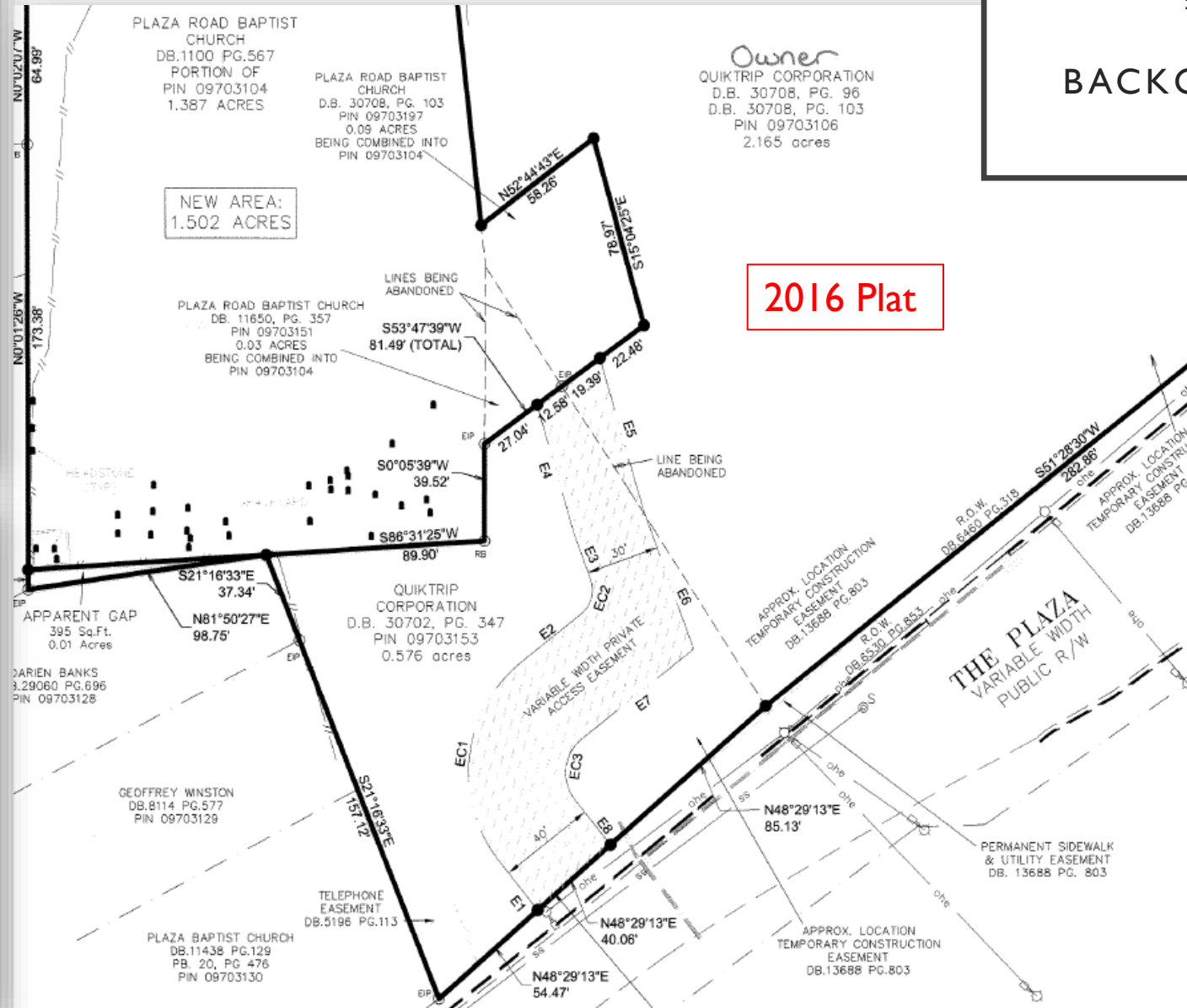




GOVERNMENT  
EXHIBIT  
2021-090  
#4

CLOSEUP AERIAL  
MAP

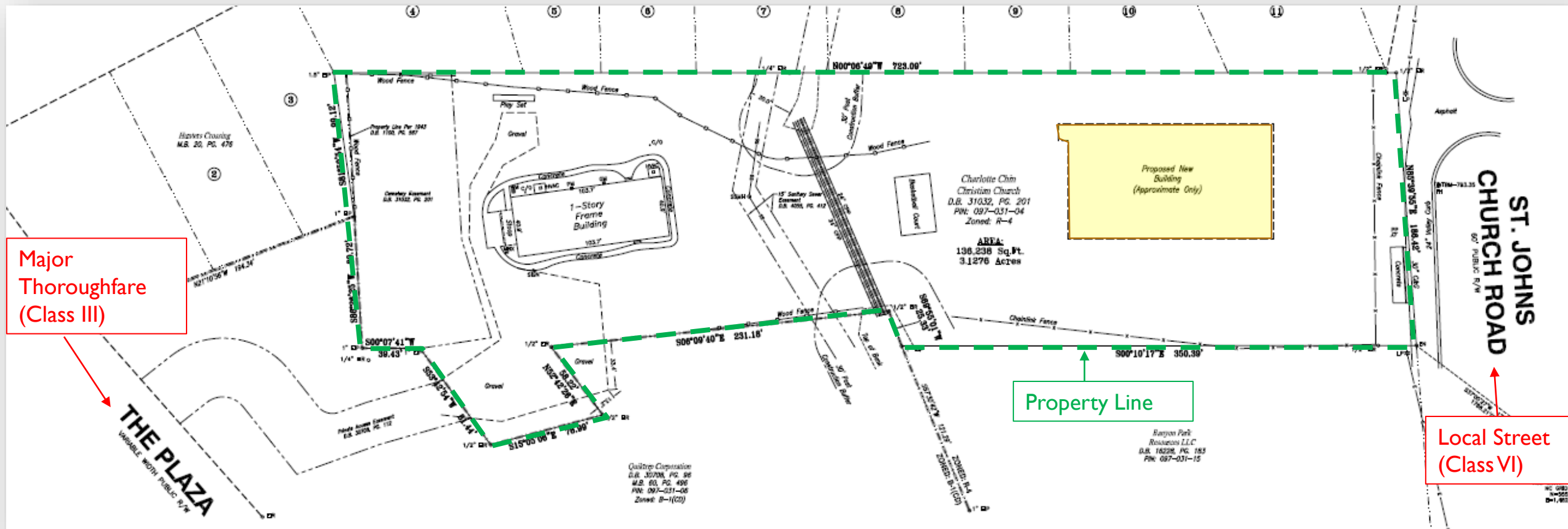
## BACKGROUND



## Requested Variance

A Variance from the Requirement that a Medium Religious Institution be Located on a Lot with Frontage on a Minor or Major Thoroughfare.

(To Permit the Construction of a Fellowship Hall on Church Lot with Frontage on a Local Street  
–St. Johns Church Road)



**Staff supports the requested variance**

The hardship was not caused by the applicant.

- The applicant purchased the property in July 2016 after the previous owners sold the portion of the site with frontage along The Plaza to QT.

The hardship results from conditions peculiar to the property.

- The existing church and cemetery on the parcel are oriented towards and have primary vehicular easement access from The Plaza.

The requested variance is consistent with the spirit and intent of the Zoning Ordinance.

- The site has been in use as a religious institution since the 1970's and the variance request will allow the use to continue.

There are no safety concerns with the granting of the variance and construction of the fellowship hall because The Plaza easement will remain as the primary vehicular access.

GOVERNMENT  
EXHIBIT  
2021-090  
#7

CONSIDERATIONS



View From  
The Plaza



View From  
QT Easement

GOVERNMENT  
EXHIBIT  
2021-090  
#8

PHOTOS



View From St. Johns  
Church Road

## APPLICANT'S PRESENTATION

Variance 2021-090



# ZBA Hearing: 21-090

Applicant: Charlotte Chin Christian Church

Presented by: David Murray

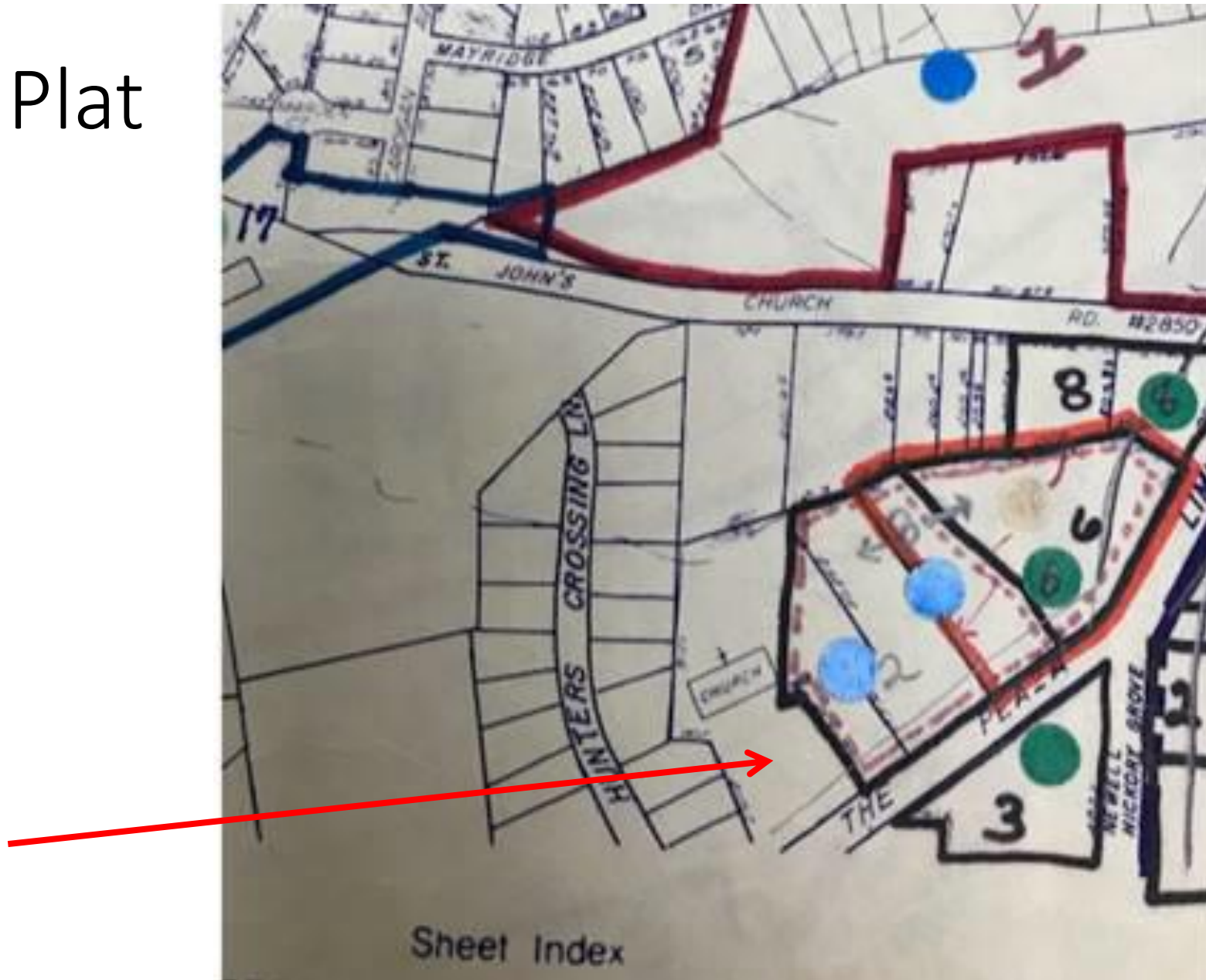
Address: 7115 The Plaza, Charlotte, NC

# Variance Request

- Applicant is seeking a variance in order to build a “medium religious institution” on a lot without frontage on a minor or major thoroughfare.
  - Variance from Ordinance Section 12.506(6)(c)

1985 Plat

Ex. 1



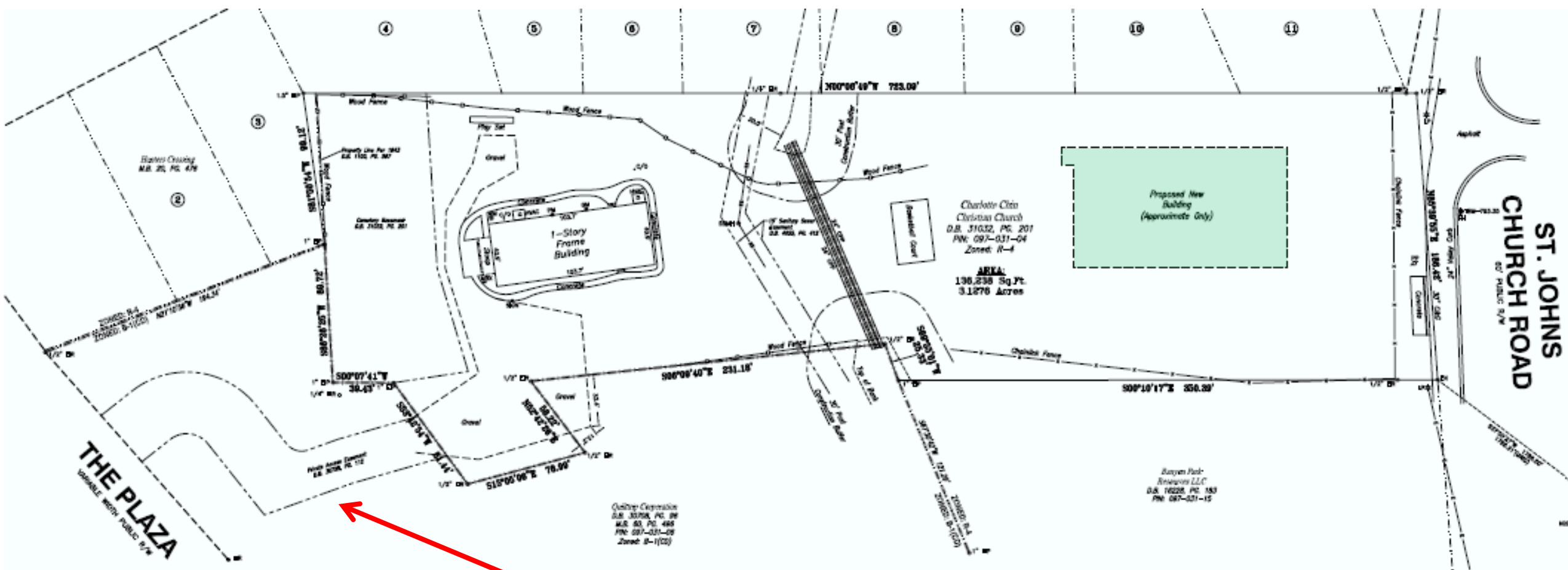
Aerial



Ex. 2

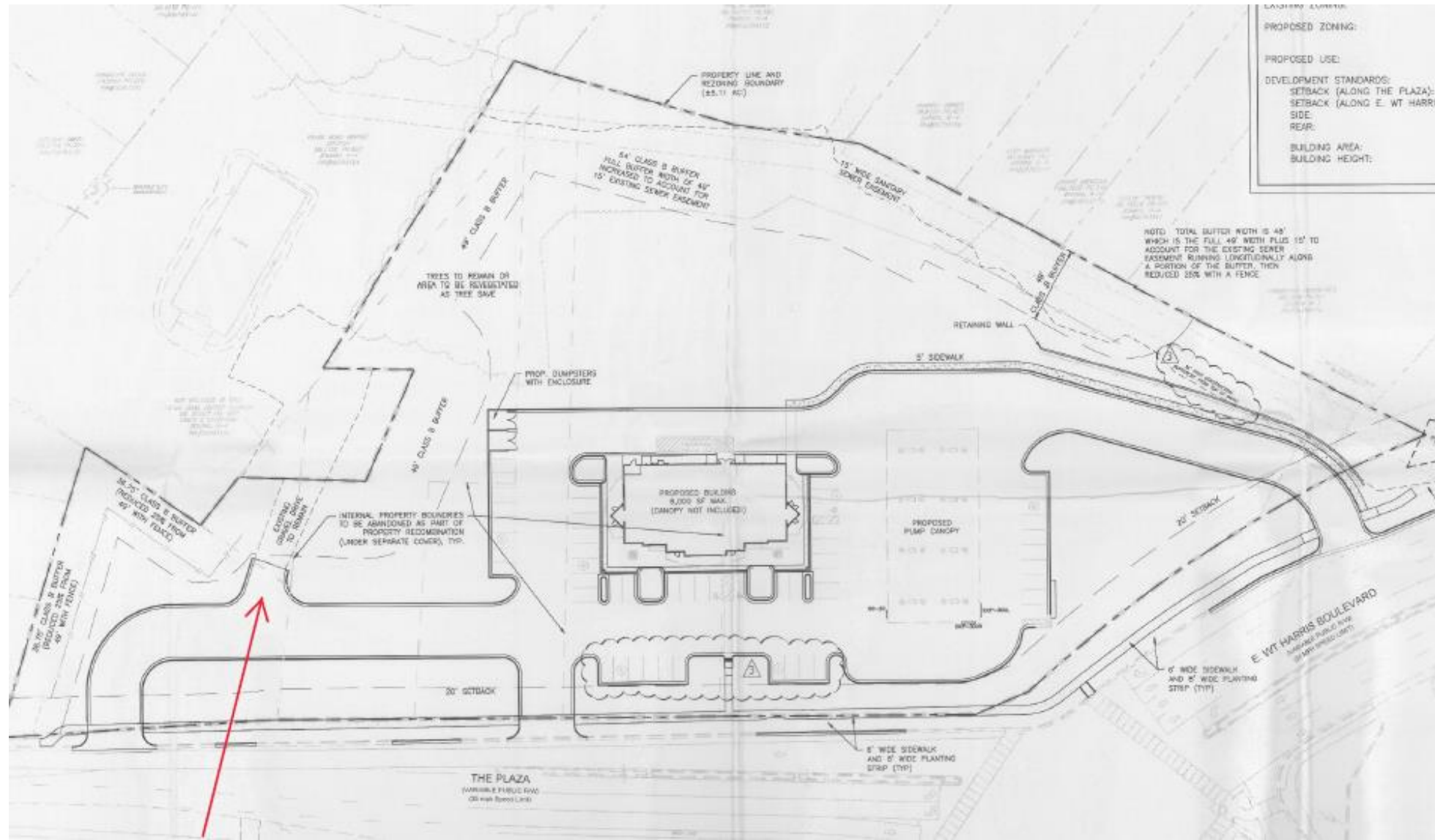
# Proposed Plat

### Ex. 3



# QT Rezoning – Access Easement

Ex. 4



# Variance Standards

(1) When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment ***shall vary*** any of the provisions of the Zoning Ordinance ***upon a showing*** of all of the following:

(a) **Unnecessary hardship** would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from **conditions that are peculiar to the property**, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship **did not result from actions taken by the applicant or the property owner**. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, **such that public safety is secured, and substantial justice is achieved**.

## a. Unnecessary Hardship

- The hardship results from the property being already developed with a church building with a substantial amount of open land for church use/development but lacks the necessary frontage on a minor/major thoroughfare, although it has legally deeded primary access to such thoroughfare.
- This lack of frontage on The Plaza prevents the congregation from constructing the fellowship hall which exceeds the size of the existing sanctuary which can no longer fully support the increased size of the congregation.

## b. Hardship runs with the land

- The hardship results from the unique shape of the parcel and its lack of direct frontage to The Plaza.
- The parcel is oriented toward The Plaza and has direct, primary, legal access to The Plaza.
- The parcel formerly abutted The Plaza but the previous owners/trustees of the church property sold the abutting parcel to a separate owner who developed a QuikTrip (QT) gas station on the property.
- In the rezoning for the QT, a dedicated ingress/egress easement for the church from The Plaza is shown.

## c. No self-created hardship

- The current owners did not cause the hardship.
- The ownership history is a bit complicated but in simplest terms the current parcels were created as follows:
  - (1) The Hilton family owned the parcel where the former Plaza Road Baptist Church existed, which is now owned by the Applicants;
  - (2) The Hilton family, who were also trustees of the Baptist church, transferred the ownership of the church parcel to the Baptist church in the 1970s;
  - (3) The existing church building was built in 1999 to replace an older/smaller sanctuary building;
  - (4) The Hilton family retained ownership of the parcel fronting The Plaza which had been used by the Baptist church and sold it to QT in April 2016; and
  - (5) The trustees of the Baptist church sold to the current owners Chin Christian church in July 2016.

## d1. Conformity with the neighborhood

- The use of the property is consistent with the existing church use which has existed since at least the 1970s.
- Because of the rezoning of the QT property, no structures can be constructed on the parcel between the church parcel and The Plaza.
- Visibly, it appears that the parcel fronting the Plaza is the church property and since it operates as the location of the church driveway, it effectively serves the church and meets the spirit and intent of 12.506(6)(c) which would allow construction of the new medium size religious institution fellowship hall.
- The spirit of the ordinance is already met with the access easement.

## d2. Secures Public Safety and Substantial Justice

- If the variance is denied, the public will not benefit in any way.
- There are no adverse effects to the general public from the owners seeking to improve the church property.
- The variance will not change anything about the location of the existing sanctuary or the access to the church property.
- Granting a variance in favor of the property owners does substantial justice and allows continued development, which is the intended purpose of the zoning ordinance.

# Questions/Comments?

- Thank you for your time and consideration.
- As the four elements of the statutory variance standards have been met, we respectfully request that you grant our variance request.



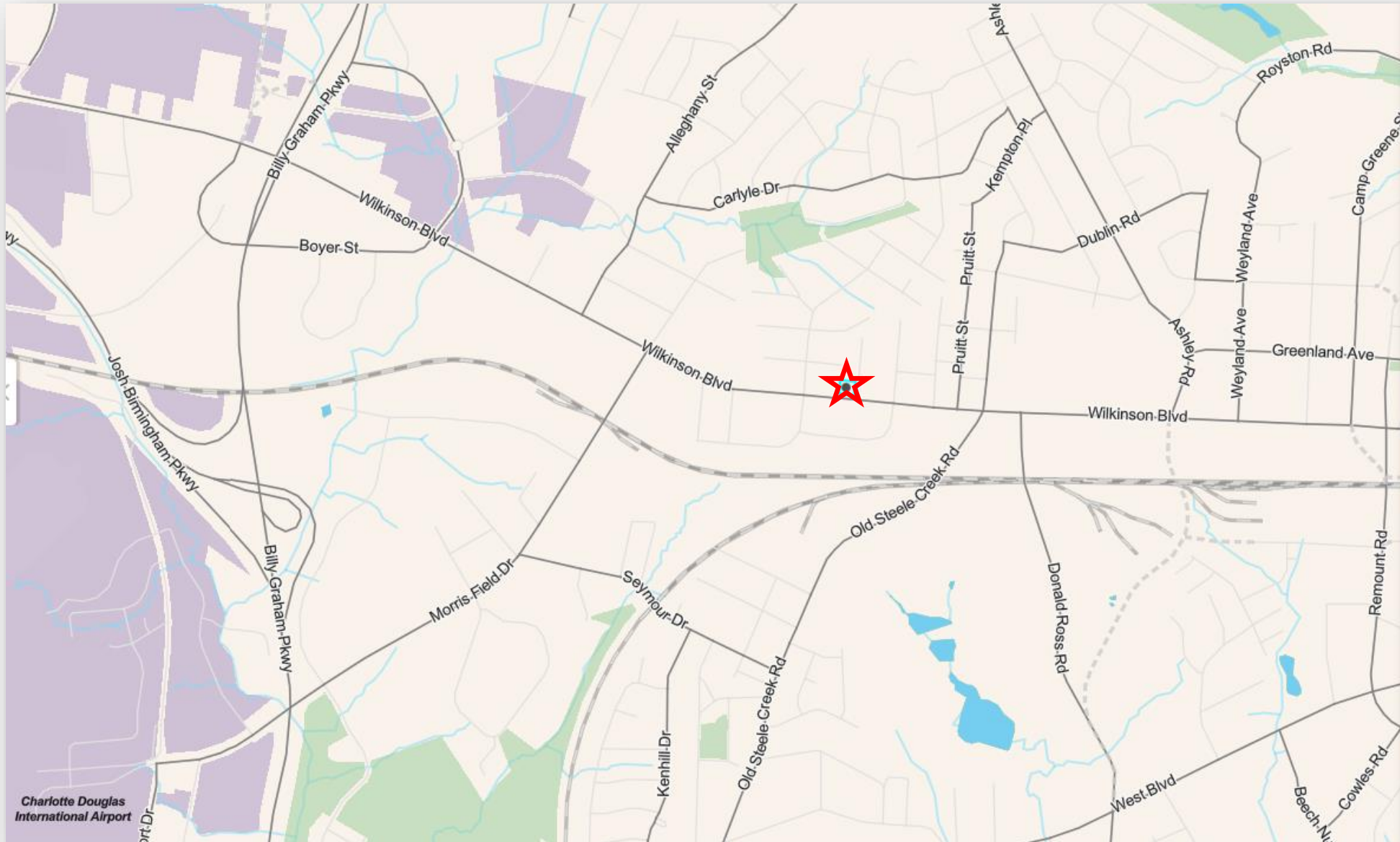
CASE NO.  
2021-094  
TRANSITIONAL  
SETBACK  
VARIANCE

***Durban Development (represented by Jake Potter),  
for property located at 3700 Wilkinson Boulevard,  
tax parcel 061-028-27.***

Requesting a variance to allow for maneuvering of vehicles within the proposed right-of-way and transitional setback along Wilkinson Boulevard.

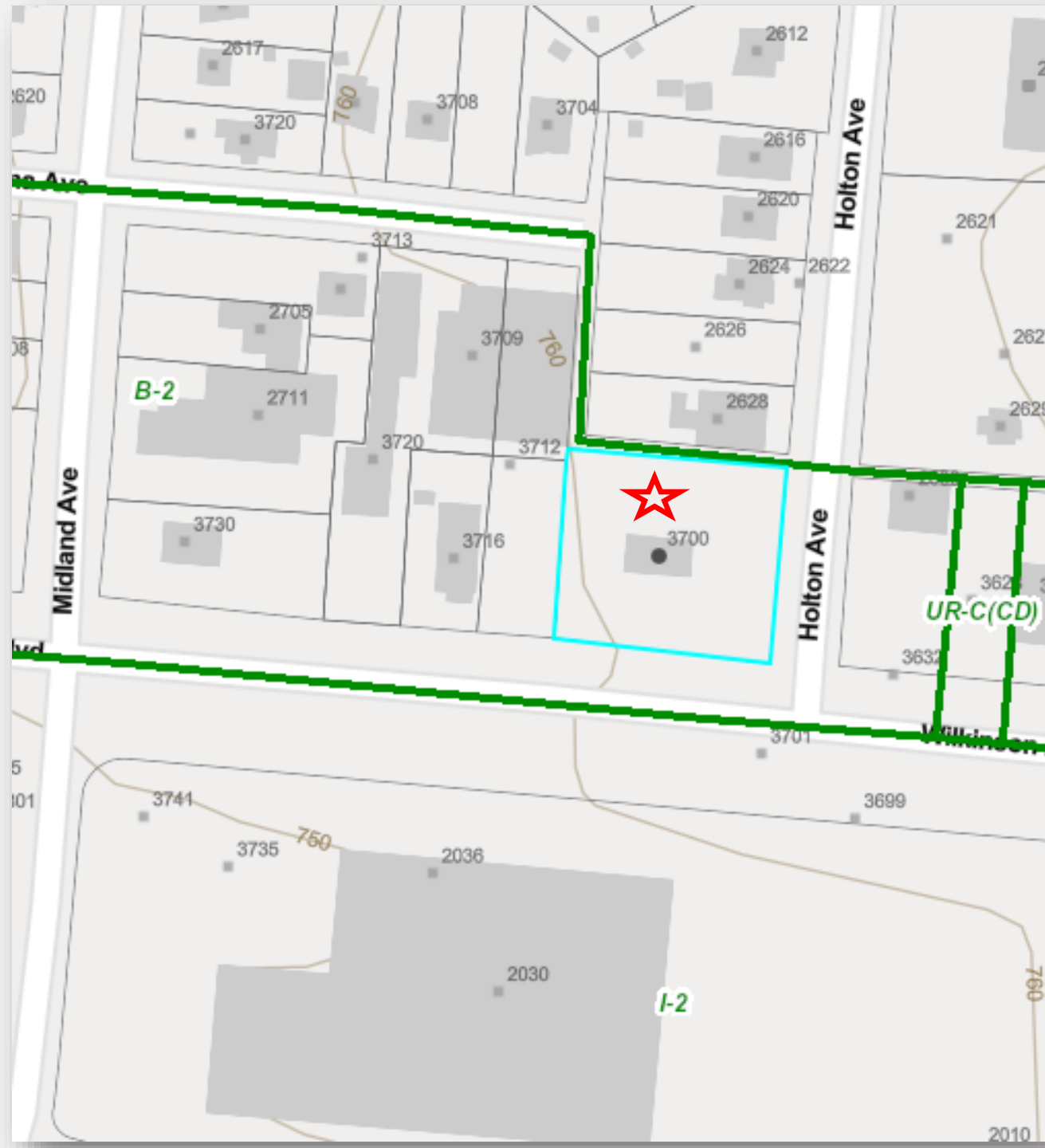
GOVERNMENT  
EXHIBIT  
2021-094  
#1

VICINITY MAP



GOVERNMENT  
EXHIBIT  
2021-094  
#2

ZONING MAP



Zoning  
B-2 (General Business)

GOVERNMENT  
EXHIBIT  
2021-094  
#3  
  
AERIAL MAP

GOVERNMENT  
EXHIBIT  
2021-094  
#3  
  
AERIAL MAP

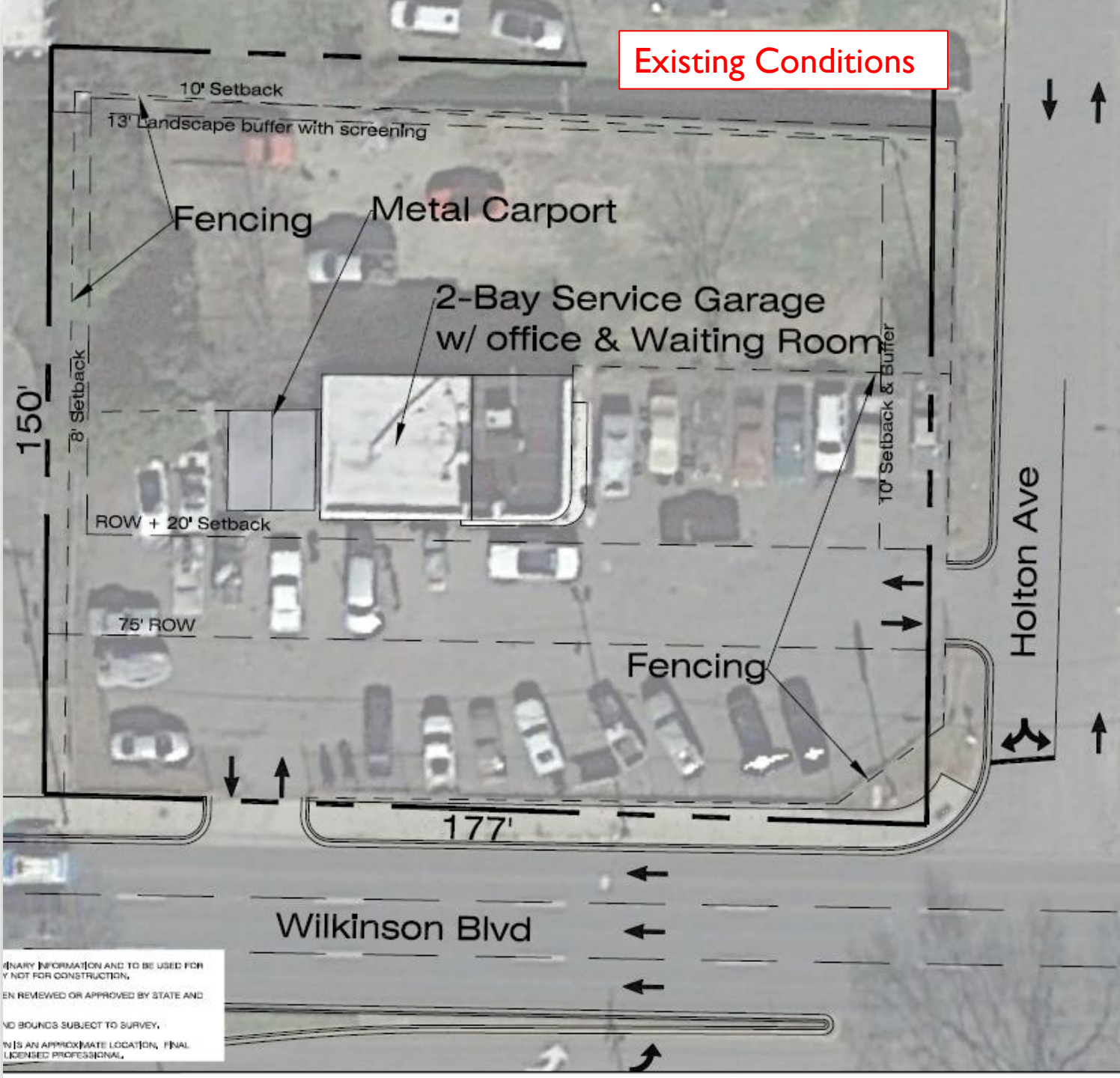


GOVERNMENT  
EXHIBIT  
2021-094  
#4

AERIAL CLOSE UP



## Existing Conditions



GOVERNMENT  
EXHIBIT  
2021-094  
#5

BACKGROUND

1955  
Development



MINIMUM INFORMATION AND TO BE USED FOR  
NOT FOR CONSTRUCTION,  
EN REVIEWED OR APPROVED BY STATE AND  
NO BOUNDS SUBJECT TO SURVEY,  
N IS AN APPROXIMATE LOCATION, FINAL  
LICENSED PROFESSIONAL,

GOVERNMENT  
EXHIBIT  
2021-094  
#6

VARIANCE  
REQUEST

**Zoning Requirement**

Maneuvering of vehicles is not permitted within the transitional setback or proposed right-of-way

**Requested Variance**

Allow maneuvering of vehicles within the proposed right-of-way and transitional setback along Wilkinson Boulevard



NOTE:  
1. PLAN(S) BASED ON PRELIMINARY INFORMATION AND TO BE USED FOR SCHEMATIC PURPOSES ONLY NOT FOR CONSTRUCTION.  
2. CURB CUTS HAVE NOT BEEN REVIEWED OR APPROVED BY STATE AND LOCAL DOT.  
3. ALL ACRESAGES, METES, AND BOUNDS SUBJECT TO SURVEY.  
4. ANY LANDSCAPING SHOWN IS AN APPROXIMATE LOCATION, FINAL DESIGN WILL BE DONE BY A LICENSED PROFESSIONAL.

Staff supports the requested variance.

The hardship was not a result of actions taken by the applicants.

- Site developed in 1955 & current parking and maneuvering encroaches into the ‘proposed right-of-way’ and ‘transitional setback’.

The proposed request meets the spirit and intent of the Zoning Ordinance

- Granting the variance would bring the parking lot further into compliance by eliminating the existing encroachment of parking spaces in the ‘proposed right-of-way’ and ‘transitional setback’.
- The Charlotte Department of Transportation and the North Carolina Department of Transportation do not object to the variance.
- CATS -future LYNX Silver Line is not located in this section of Wilkinson Boulevard.

Granting the variance will not adversely affect adjacent or contiguous properties or alter the essential character of the area.

- Many properties along Wilkinson Boulevard have parking areas that encroach into the ‘required setback’ and ‘transitional setback’.

The variance will not impact public safety.

- The applicants proposed driveway and isles for maneuvering within the parking area will be better defined for safety.

Due to the existing nonconforming parking and maneuvering area on the property, and application of the ‘proposed right-of-way’ and ‘transitional setback’ along Wilkinson Boulevard, a hardship exists that would make redevelopment of the site difficult without the requested encroachment.

GOVERNMENT  
EXHIBIT  
2021-094  
#8

PHOTOS



Corner View



Holton Ave. View



Wilkinson Blvd View



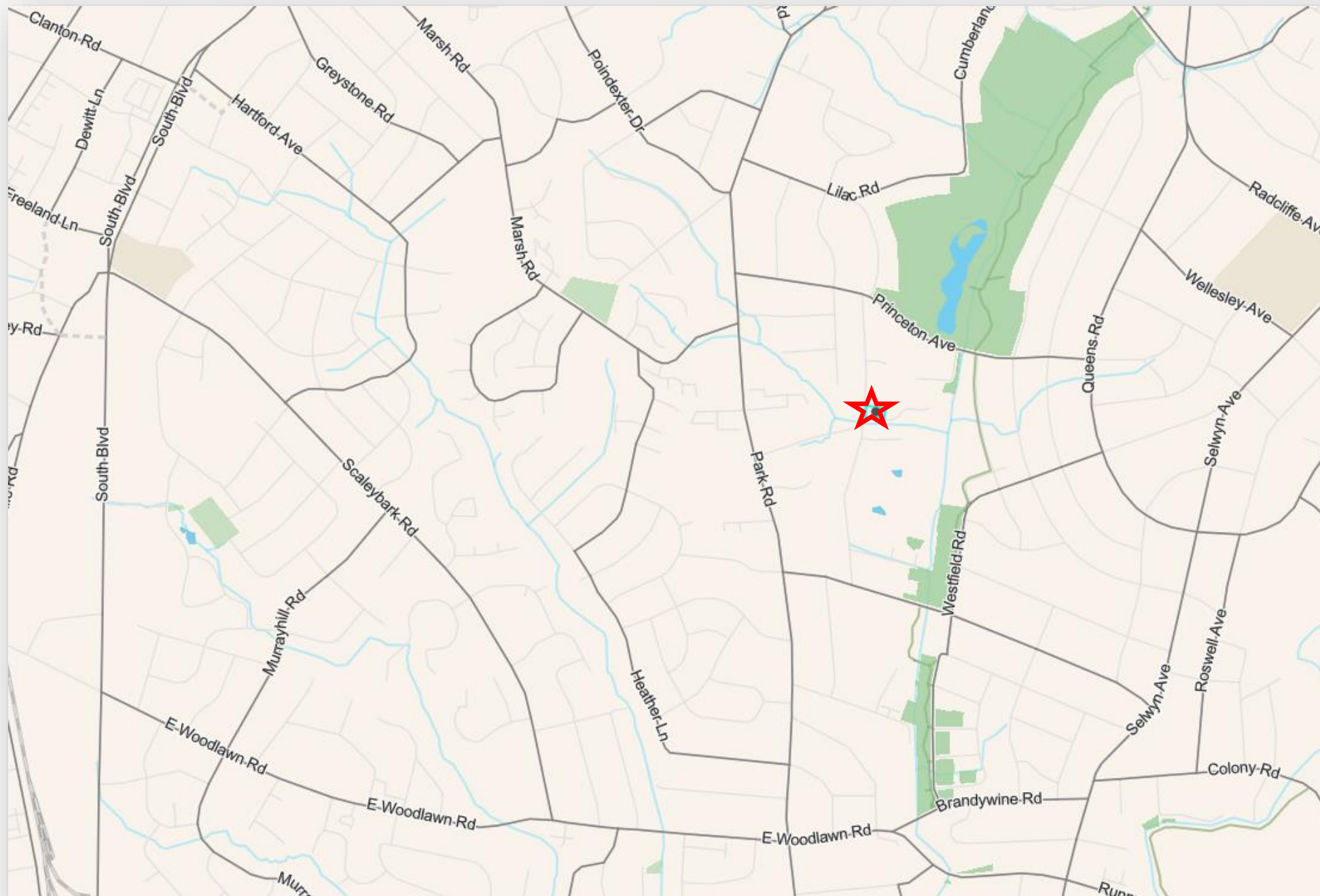
CASE NO.  
2021-089  
RESIDENTIAL  
SETBACK  
VARIANCE

***JAS-AM, Inc. (represented by David W. Murray, The Odom Firm, PLLC) for property located at 3235 Willow Oak Road, tax parcel 151-113-36.***

Requesting a 15 foot variance from the 30 foot setback for the construction of a duplex unit facing Willow Oak Road.

GOVERNMENT  
EXHIBIT  
2021-089  
#1

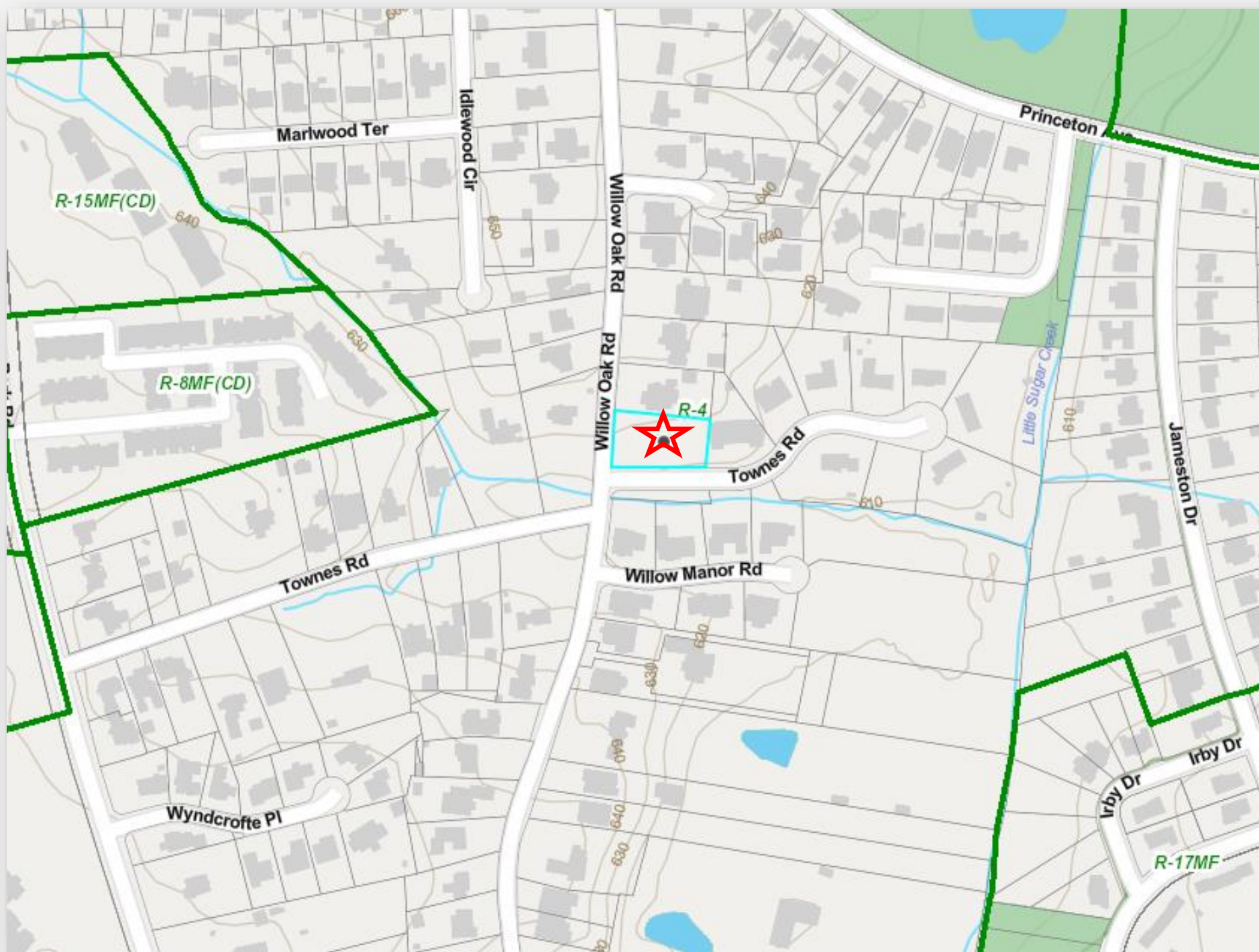
VICINITY MAP



GOVERNMENT  
EXHIBIT  
2021-089  
#2

ZONING MAP

Zoning  
R-4  
(Single Family)



## AERIAL MAP



GOVERNMENT  
EXHIBIT  
2021-089  
#4

CLOSEUP  
AERIAL MAP



Mecklenburg County  
Land Use and Environmental Services  
2145 Suttle Avenue  
Charlotte, NC 28208  
(980) 314 - CODE (2633)



Building Permit

One/Two Family

Permit: B3995140  
Issue Date: 06/25/2021  
Issued By: Gomez, Lorena

June 2021  
Building Permit

Property Details:

Address: 3235 WILLOW OAK RD  
Subdivision:  
Owner: Jas-Am, Inc.  
Owner Address: 5113 Piper Station Dr Suite 201 Charlotte, NC 28277  
Tax Jurisdiction: CHARLOTTE  
Parcel Id: 15111336  
Owner Phone No: 7045078795

Block: Lot: Land Area: Corner Lot: Y Irregular Lot: N Through Lot: N  
Minimum Setbacks (ft.) Front: 30.0 Rear: 40.0 Right Side: 15.0 Left Side: 5.0

Project Details:

Project Number: NR0734175  
Project Name: Willow Oak Duplex New. Two Family Dwelling (Duplex).  
USDC Code: 103 - Two Family / Duplex  
Occupancy: R3 \* RESIDENTIAL - SINGLE FAMILY  
Res Master Plan #:

GOVERNMENT  
EXHIBIT  
2021-089  
#5

BACKGROUND

Building Permit Plot Plan



**PLOT PLAN FOR PERMIT APPLICATION**  
ONE/TWO FAMILY, MODULAR, MOBILE HOME OR ZONING USE

Permit #:

3235 Willow Oak Rd  
Street #: (N,S,E,W) Street Name (AV, RD, etc.) Suite #/Units

Tax Parcel #: 15111336 Job #:

INSTRUCTIONS:

In the space provided, draw plot plan as neatly and accurately as possible, from survey if available. Separate application and plot plan required for each building.

1. Draw street(s) and right-of-way(s)
2. Draw property lines with dimensions.
3. Draw proposed and existing buildings showing any attached porch(es), deck(s), chimney(s), carport(s) or garage(s), etc...
4. Show distances of buildings from property lines or other structures.
5. Show all major utility



July 2021  
Notice of Violation

CITY OF CHARLOTTE  
HOUSING & NEIGHBORHOOD SERVICES  
Code Enforcement

July 28, 2021

JAS-AM INC  
5113 PIPER STATION DR UNIT 201  
CHARLOTTE, NC 28277

**ZONING NOTICE OF VIOLATION**  
Case Number: 20210040511 Document #332100

Property Address: 3235 WILLOW OAK RD CHARLOTTE NC 28209  
Tax Parcel No.: 15111336  
Zoning Classification: R-4

**Violation Summary:**

INCORRECT YARDS SHOWING ON PLANS OWNER NEEDS TO RESUBMIT PLANS TO PLANNING DEPARTMENT SHOWING CORRECTIONS BEFORE CONSTRUCTION BEGINS. A STOP WORK ORDER HAS BEEN ISSUED FOR THIS PROPERTY. CORRECT WITHIN 30 DAYS OF THE DATE OF THIS LETTER TO AVOID ESCALATING MONATERY CITATIONS.

**Zoning Ordinance:**

Setback: 30 feet

Single Family Detached Street Side Yard: 15 Ft

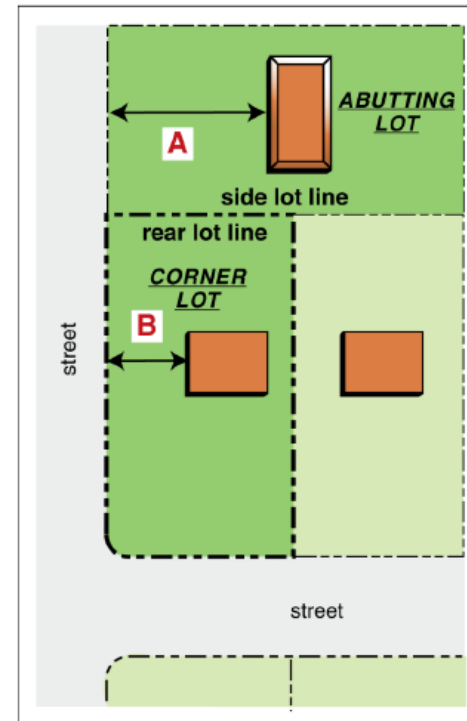
Duplex Street Side Yard: 30 Ft

**Duplex Supplemental Regulations:**

- The dwelling will be located on a corner lot;
- If more than one entrance, the entrances to each unit in the structure will face different streets; and
- The minimum setback requirement must be applied to each of the two different streets.

**Street Side Yard for Single Family Detached Homes**

**FIGURE 12.102(b)**



- A Setback  
B Side yard for corner lot shall be at least 50 percent of Setback A  
But not less than 10 feet from the right-of-way

GOVERNMENT  
EXHIBIT  
2021-089  
#6

BACKGROUND

## Zoning Ordinance:

Duplex Street Side Yard: 30 Ft

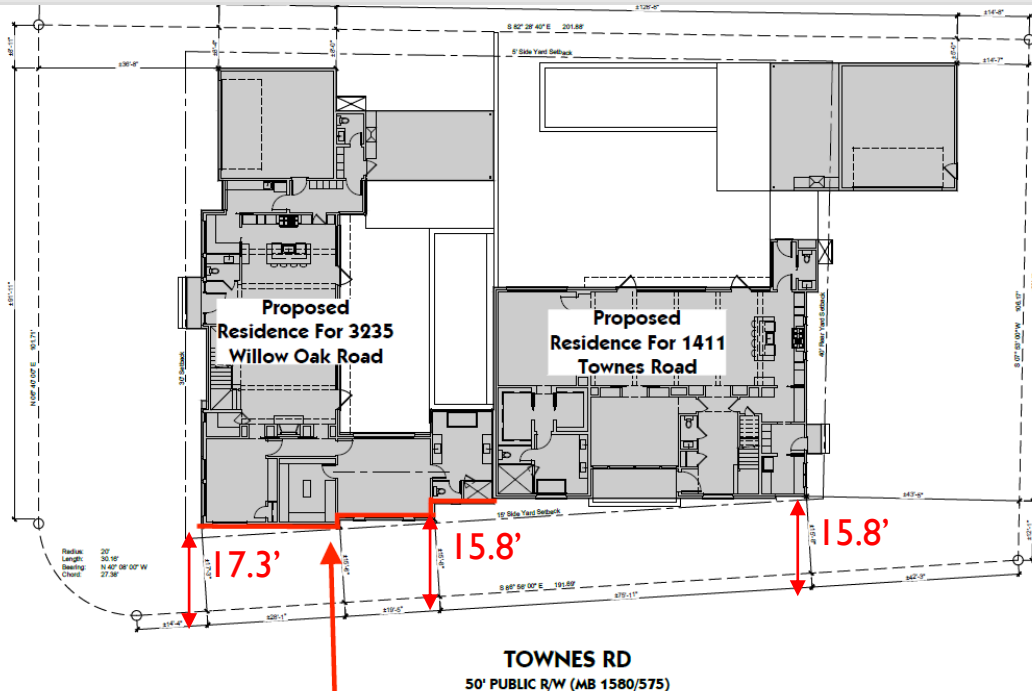
## Variance Request:

15 Ft variance from the 30 Ft setback for construction of a duplex unit facing Willow Oak Road  
(for a 15 Ft Setback along Townes Road for the Willow Oak Road facing unit)

GOVERNMENT  
EXHIBIT  
2021-089  
#7

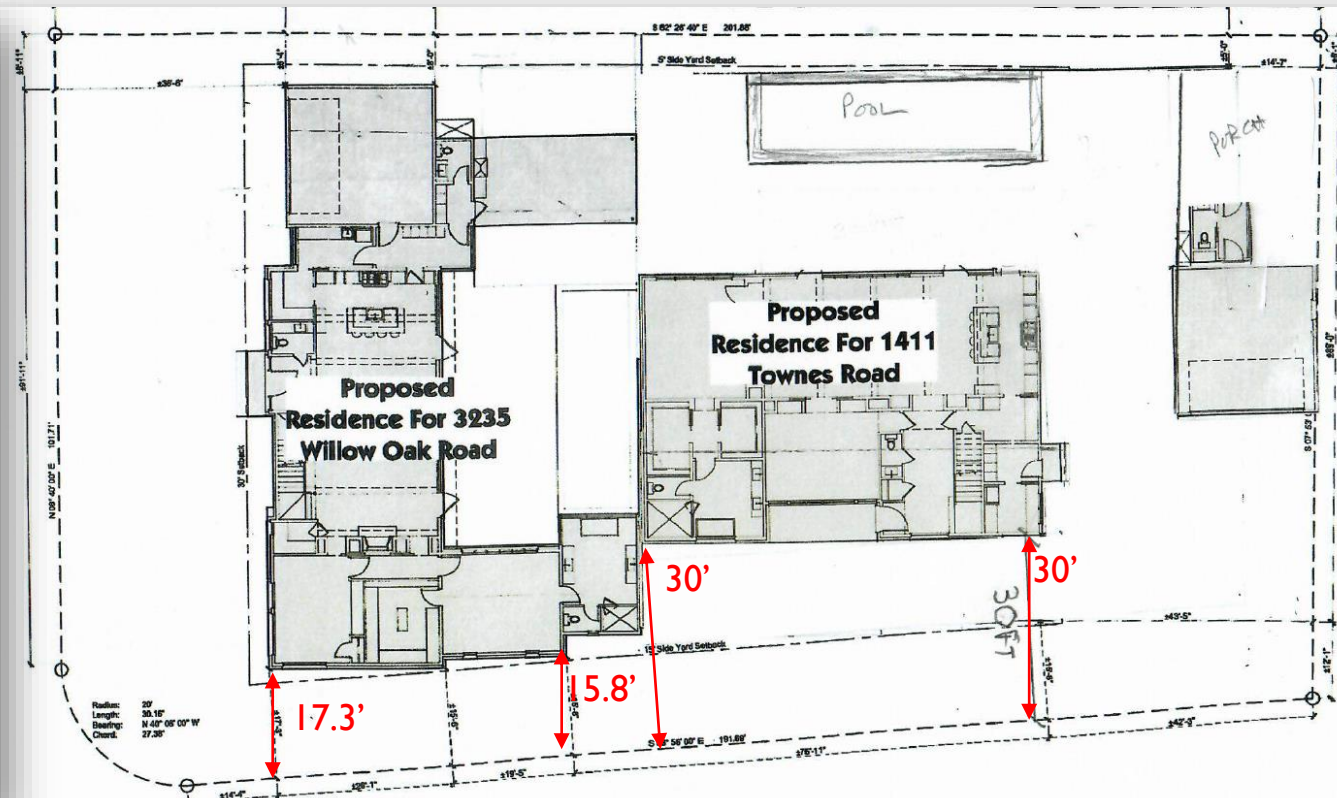
VARIANCE  
REQUEST

Permitted Site Plan with 15' Street Side Yard Along Townes Road



The highlighted wall belongs to the unit facing Willow Oak.

Proposed 15' Variance for Unit Facing Willow Oak Road



GOVERNMENT  
EXHIBIT  
2021-089  
#8

CONSIDERATIONS

Staff supports the requested variance.

The hardship is not a result of actions taken by the applicant.

- City staff provided incorrect information in the application regarding setback for duplex structures.
- The applicant was unaware of the 30 foot setback requirement along Townes until they received the Notice of Violation.
- The applicant had already begun construction and expended substantial resources on the subject dwelling unit within the duplex facing Willow Oak Road when the notice was issued.
- The applicant has agreed to construct the second dwelling unit within the duplex facing Townes Road in compliance with the 30 foot setback as a compromise since site work for that unit was not as extensive.

In granting the variance public safety is secured and substantial justice is achieved.

The hardship is unique to the property.

- The lot is a corner lot and the applicant states it is one of the only lots on Willow Oak of sufficient size to support a duplex.
- The hardship is unique to subject property since the property located directly across Townes Road is undevelopable due to its lot width being only approximately 20'. Therefore, the property which would be most impacted by the variance request will not be developed.

The requested variance is in harmony with the intent of the Zoning Ordinance which permits duplexes on corner lots in the R-4 zoning district.

The proposed placement of the duplex on the subject property will meet the spirit and intent of the Zoning Ordinance by having the dwelling unit facing Townes Road step back to the required 30' setback dimension to align with the required setbacks of the single family homes further east along the street.



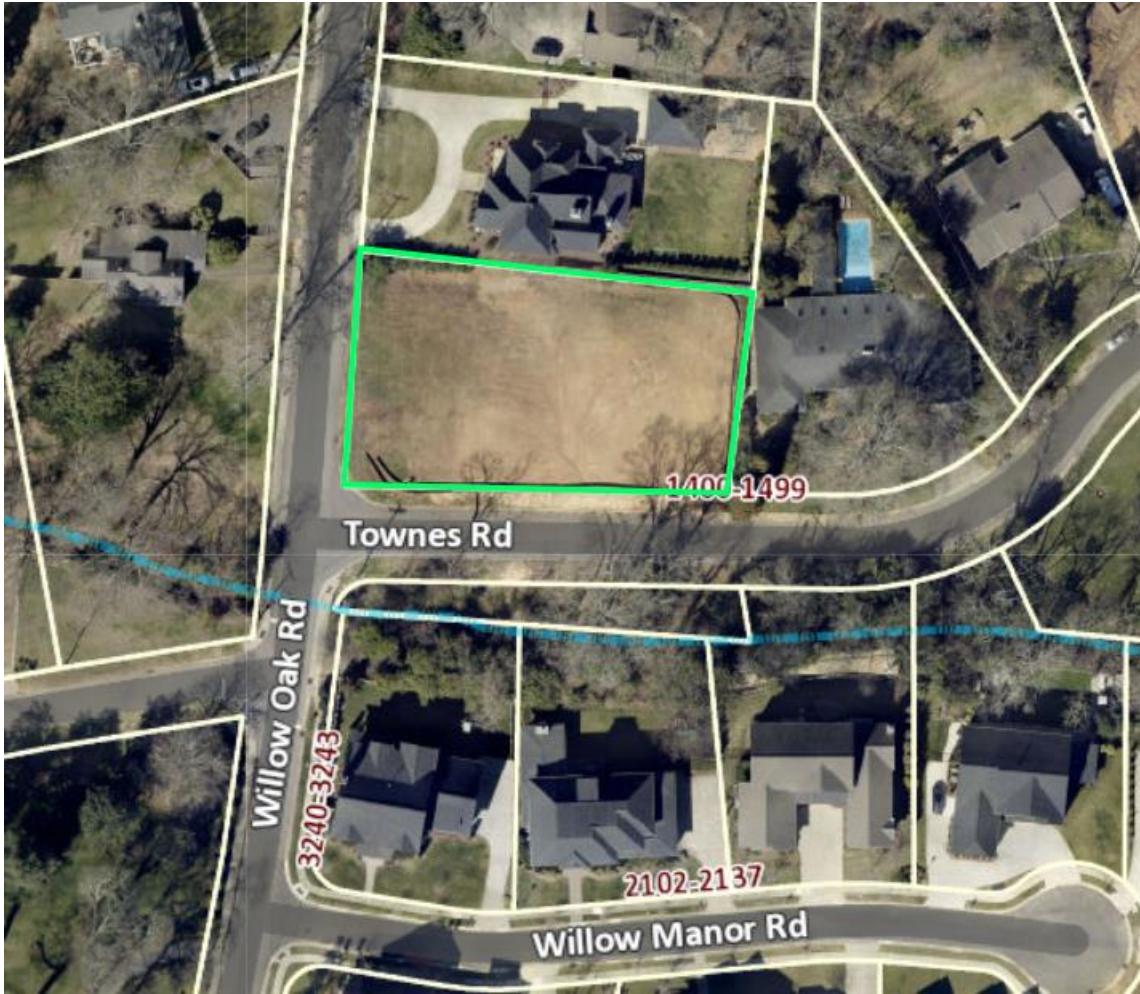
GOVERNMENT  
EXHIBIT  
2021-089  
#9

PHOTOS



## APPLICANT'S PRESENTATION

Variance 2021-089



# ZBA Hearing: 21-089

Applicant: JAS-AM, Inc.

Presented by: David Murray

Address: 3235 Willow Oak Road, Charlotte, NC

# Variance Request

- Applicant is seeking a variance so that construction can continue for a duplex unit facing Willow Oak Road. Construction began under a properly issued permit after conversations with the City confirming a 15' setback on Townes Road. The duplex setback on Townes Road is actually 30' under R-4 zoning and the City mistakenly issued the permit.
- Since site work, a retaining wall and grading for footings had only been undertaken for the front unit, the applicant is requesting the reduction in the 15' setback only on the front unit.
- The applicants relied in good faith upon the permits in starting construction to a 15' setback along Townes Road.

# Timeline

- Prior to closing and during due diligence, the Owner inquired with the planning department about how they would apply the setback along Townes Road for a duplex.
- Informed 15' but cannot recall from who – phone conversation with LUESA office during COVID shutdown
- Submitted permit applications for duplex on 6/12/21
- Permits were issued on 6/25/21
- Needed a permit for the Townes Road unit's detached garage. Went to LUESA on 7/26 to get garage permit. Lovely Bell saw the application and indicated an issue with the duplex permits at that time.
- Received a call on 7/26 from Sonja Sanders in zoning advising that owner had been told the wrong setback and had been issued incorrect permits for a 15' setback along Townes Road for a duplex, and that construction must cease.
- At time of the call on 7/26, all site prep work, including substantial grading, for the front unit footers had been completed.

# Costs in reliance upon 15' setback

- Architectural design: \$50,000
- Retaining wall construction: \$33,000
- Grading/demolition: \$40,000
- Total: \$123,000

# Existing

# Ex. 1

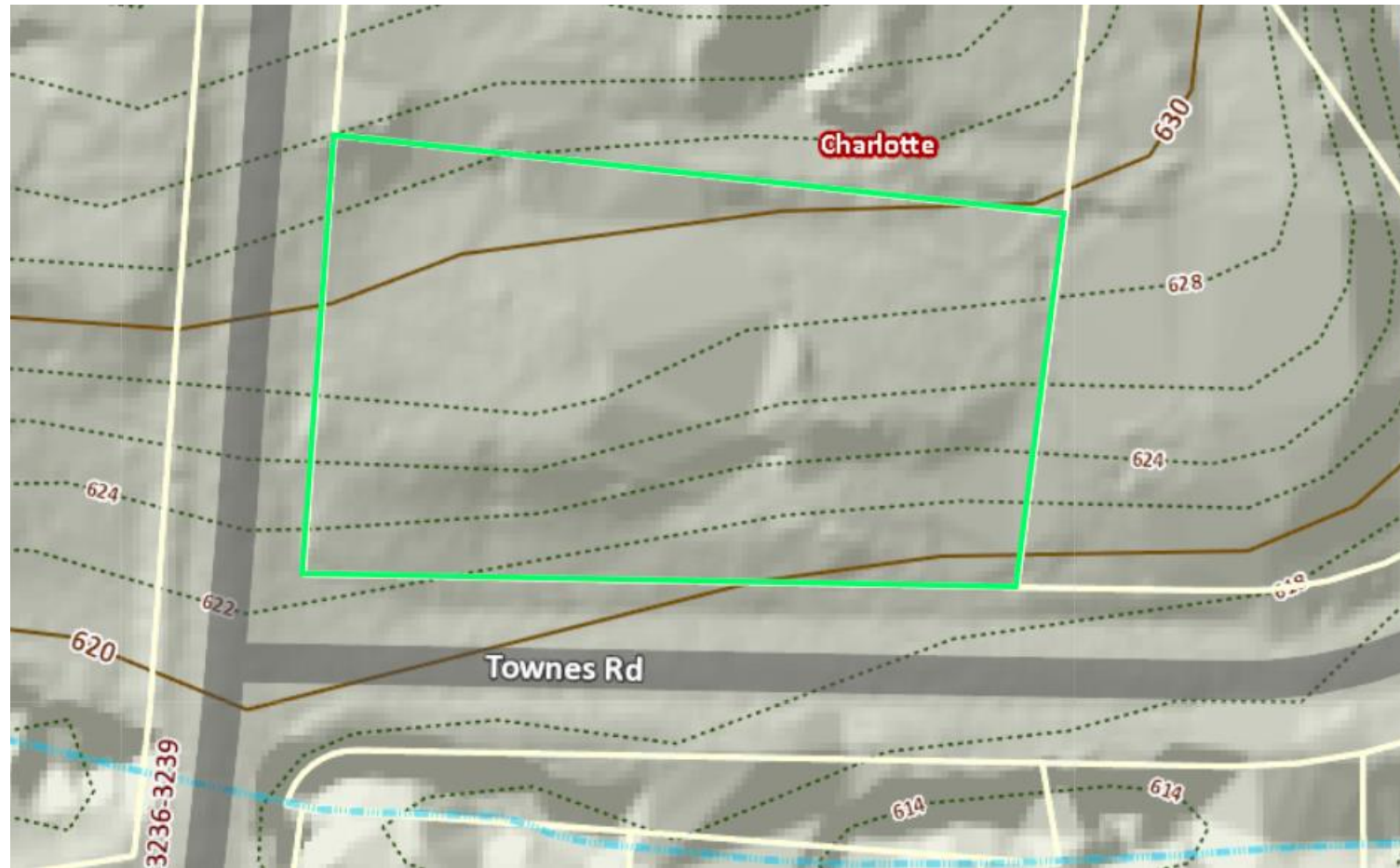
Area of variance

Buffer tract



# Topography

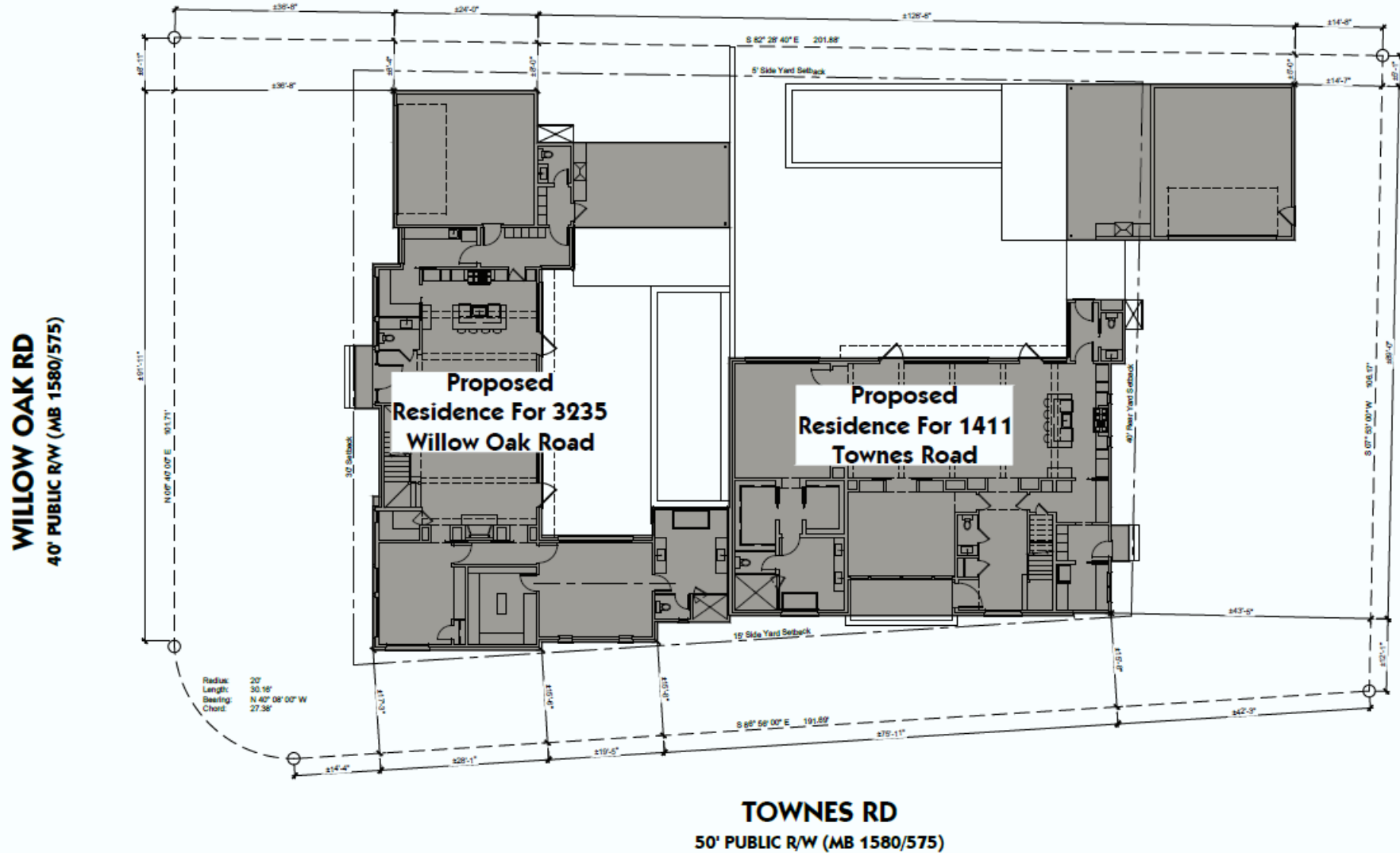
Ex. 2



- Site falls from approximately 630' to 620' and required substantial grading in order to level site to grade of Townes Road for house.

# Proposed Plat for Permits

## Ex. 3





# **CITY OF CHARLOTTE** **ZONING SUPPLEMENT FOR RESIDENTIAL PERMIT APPLICATION** (Please Print)

Submittal Number:		Project Number:	
<b>APPLICANT INFORMATION</b>			
Owner's name: Jas-Am, Inc.		Applicant/ Contractor's Name: Jas-Am, Inc.	
Applicant/ Contractor's Address: 5113 Piper Station Dr Suite 201 Charlotte NC 28277			
Project Street address: 3235 Willow Oak Rd		Tax Parcel #: 15111336	Zoning: R-4
City: Charlotte	State: NC	Zip Code: 28209	Subdivision Name: Applicant Phone #: ( 704) 507-8795
Type of Work: <input checked="" type="checkbox"/> New <input type="checkbox"/> Addition <input type="checkbox"/> Accessory <input type="checkbox"/> Breezeway		Corner/ Thru Lot: Corner	Utility Structures on Property:
Project Description: New duplex on a vacant lot			

OFFICE USE ONLY				
Front Setback Min.:	Property Line <input type="checkbox"/>	Left Yard Min.:	Right Yard Min.:	Rear Yard Min.:
	Back of Curb <input type="checkbox"/>			
Petition Number:	Historic District:	Tree Save:	Watershed/ SWIM:	Max BUA:
				% of Building Coverage:

MAXIMUM HEIGHT FOR RESIDENTIAL USES			
Type of Use	Base Maximum Average Height (feet)	Maximum Average Height at the Front Building Line (feet)	Height Ratio
All Residential Uses	<ul style="list-style-type: none"> <li>R-3, R-4, R-8MF, R-12MF, UR-1, MX-1, MX-2, and MX-3: 40' - Measured at the required side yard line.</li> <li>R-5, R-6, and R-8: 35' - Measured at the required side yard line.</li> </ul>	<ul style="list-style-type: none"> <li>R-3, R-4, R-8MF, R-12MF, UR-1, MX-1, MX-2, and MX-3: 48'</li> <li>R-5, R-6, and R-8: 40'</li> </ul>	One additional foot of height is allowed for each additional one foot in distance the portion of the building is from the required side yard line.

APPLICANT CERTIFICATION		
THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE IS EITHER THE OWNER OR THE AUTHORIZED AGENT OF THE OWNER AND HEREBY MAKES APPLICATION FOR PERMIT AND INSPECTION OF WORK DESCRIBED AND AGREES TO COMPLY WITH ALL APPLICABLE LAWS, INCLUDING BUT NOT LIMITED TO THE CITY OF CHARLOTTE ZONING ORDINANCE, REGULATING THE WORK.		
Brent J. Bowers	6/12/2021	<i>Brent J. Bowers</i>
Applicant Name	Date	Applicant Signature
By issuance of this permit, the City of Charlotte has not determined the location or existence of any drainage, water or sanitary sewer facilities or easements that may exist on the property. These determinations remain the sole responsibility of the property owner. Sources for assistance with property information include, but are not limited to, the Mecklenburg County Register of Deeds, Charlotte Explorer ( <a href="https://explore.charlottenc.gov">https://explore.charlottenc.gov</a> ), or a professional land surveyor.		

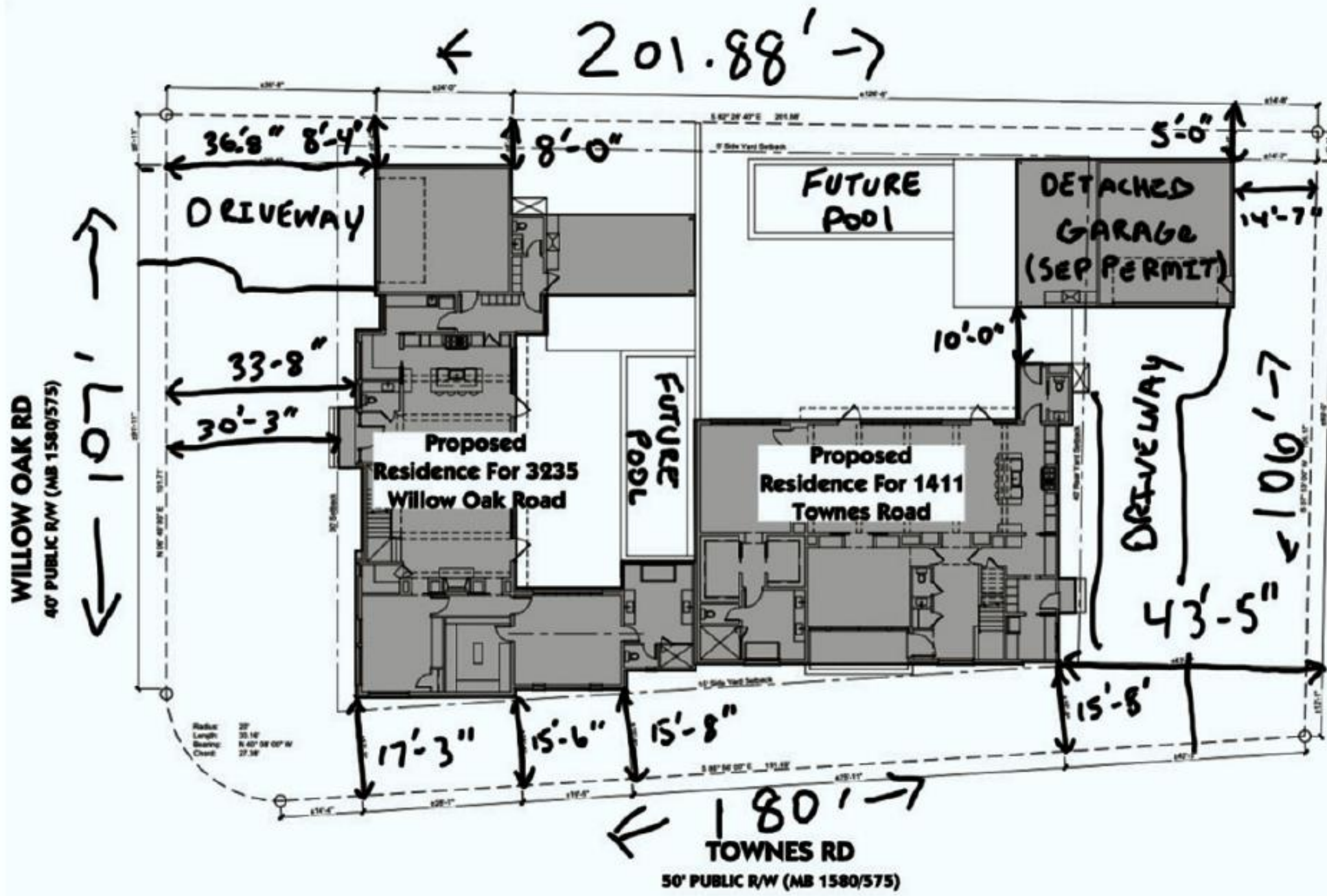


PLOT PLAN FOR PERMIT APPLICATION		Permit #:
3235	Willow Oak	Rd
Street #:	(N,S,E,W) Street Name	(AV, RD, etc.) Suite #/Units
Tax Parcel #:	15111336	Job #:
<p><b>INSTRUCTIONS:</b></p> <p>In the space provided, draw plot plan as neatly and accurately as possible, from survey if available. Separate application and plot plan required for each building.</p> <ol style="list-style-type: none"> <li>1. Draw street(s) and right-of-way(s)</li> <li>2. Draw property lines with dimensions.</li> <li>3. Draw proposed and existing buildings showing any attached porch(es), deck(s), chimney(s), carport(s) or garage(s), etc...</li> <li>4. Show distances of buildings from property lines or other structures.</li> <li>5. Show all major utility towers, when applicable.</li> </ol>		
Plot Plan Examples		
<p>ALL EXISTING AND PROPOSED BUILDINGS ON LOT ARE SHOWN WITH MEASUREMENTS INDICATED.</p> <p><i>Brent J. Bowers</i>      6/12/2021      Brent J. Bowers</p> <p>Applicant's signature      Date      PRINT APPLICANT'S NAME</p>		

Zoning Approved By:	Date:
Remarks:	

Ex. 4

Ex. 5





Permit: B3995140  
Issue Date: 08/25/2021  
Issued By: Gomez, Lorena

Agency Phone # Reason

Additional Information:  
NOTE:

## Building Permit

One/Two Family

### Property Details:

Address: 3235 WILLOW OAK RD  
Subdivision:  
Owner: Jas-Am, Inc.  
Owner Address: 5113 Piper Station Dr Suite 201 Charlotte, NC 28277

Tax Jurisdiction: CHARLOTTE  
Parcel Id: 15111338  
Owner Phone No: 7045078795

Block: Lot: Land Area: Corner Lot: Y Irregular Lot: N Through Lot: N  
Minimum Setbacks (ft.) Front: 30.0 Rear: 40.0 Right Side: 15.0 Left Side: 5.0

### Project Details:

Project Number: NR034175  
Project Name: Willow Oak Duplex New. Two Family Dwelling (Duplex).  
USDC Code: 103 - Two Family / Duplex  
Occupancy: R3 \* RESIDENTIAL - SINGLE FAMILY  
Lien Agent: Agent: Chicago Title Company, LLC Phone: (888) 690-7384 Fax: (919) 489-5231 Email: support@lensnc.com Mailing Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601 Physical Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601  
Res Master Plan #:   
Lien Agent No: 1483793

### Trade Details:

#### Building

Details: New. Two Family Dwelling (Duplex).  
Type of Work: New  
SI Required: N Bedroom Addition:

Square Footage: Heated: 4256 Renovated: Deck:  
Unheated: 948 Converted:

Does the weight of the PV system exceed 3lbs per square foot?  
Does the roof possess more than one layer of asphalt shingles?  
Does the roofing material consist of a type other than asphalt or metal?  
Solar PV Option:

#### Electrical

Service: New  
Total Amps: 400 # of Circuits: 45 Power Company: DUKE ENERGY  
Circuits at 120V: 115 Circuits Over 120V: 6

#### Mechanical

Heating Details: Central A/C, Gas/Oil Furnace, Chimney  
Gas Company: PIEDMONT NATURAL GAS  
# of Gas Connections: 8 # of Appliances: 5

### Permit Notes

Zoning Setbacks listed on the permit is for the footprint of the entire building. Both units of the duplex project must be in compliance within the limits of the building footprint setbacks.

CO hold for final inspection

HVAC equipment may encroach into set-back area by 50%.

Complete new construction of a duplex on a vacant lot. Footings, foundation, and framing. Window and exterior door install. Asphalt shingle roof install. Full brick veneer. Rough in of electrical, mechanical, and plumbing. Insulation, drywall and trim installation. Flooring, tile, and paint. Trim out of electrical, mechanical, plumbing. Final grade and landscaping.

### Inspection Team

Your project has been assigned to the Residential Inspection Team. For further assistance you can contact the Residential Inspection Team:

Manager: Griffin, Jeff  
Supervisor: Burgin, Brandon  
Supervisor: Kale, Michael  
Supervisor: Barrett, Dave  
Supervisor: Barrett, Dave

To contact your project manager, inspection supervisor, or obtain inspection assistance with your project, call 980-214-3168.

Ex. 6

Ex. 7



## Plan Review Notes for 423705 -- 423705 Willow Oak Duplex - Duplex

---

### Unit Notes:

#### Charlotte Zoning Unit

Noted on 6/25/2021

Zoning Plan Review Staff Reviewer ELIZABETH KENNEDY Date of Review 6/25/2021 Parcel ID 15111336 Address 3235 WILLIOW OAK RD Zoning R-4 Front Setback 30 FT Left Setback 5 FT Right Setback 5 FT Rear Setback 40 FT Setbacks from PROPERTY LINE TO BUILDING WALL Setback notes PLOT PLAN APPEARS TO BE IN COMPLIANCE MINIMUM PRIVATE OPEN SPACE PER SUB LOT IS 400 SF Project Code & Description RES DUPLEX DWELLING ATTACHED Min Lot Size Required 6899.9 Approx Lot Sq Ft 22999.68 Open Space Req. 400 SF Open Space Notes PLOT PLAN APPEARS TO SHOW COMPLIANCE WITH OPEN SPACE REQUIREMENTS Height (from grade) 35.5 FT

Ex. 8



Ex. 9



Ex. 10





Ex. 11

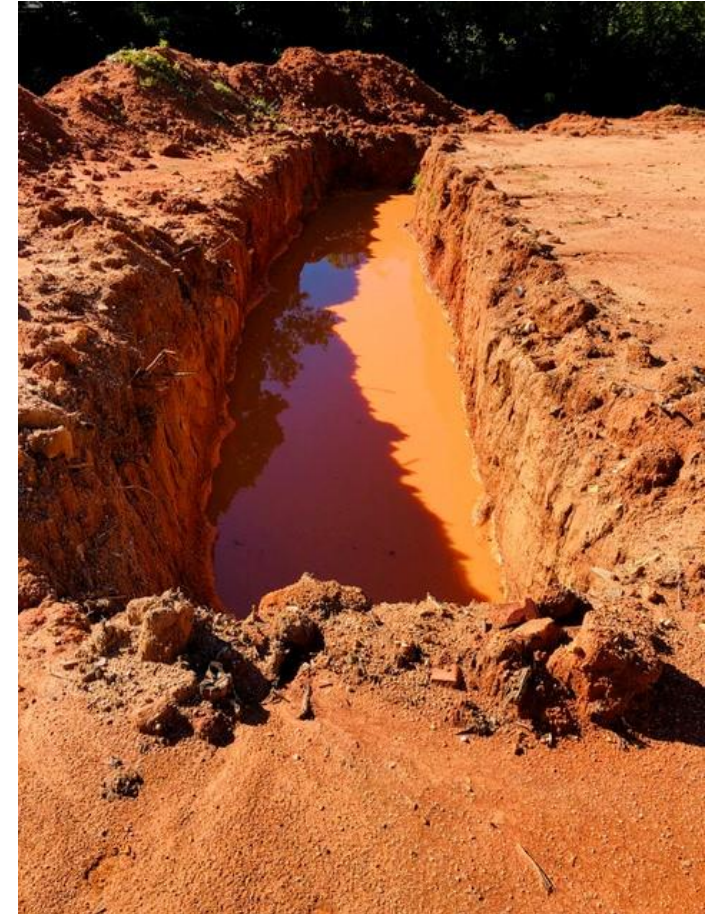
# Ex. 12



Ex. 13



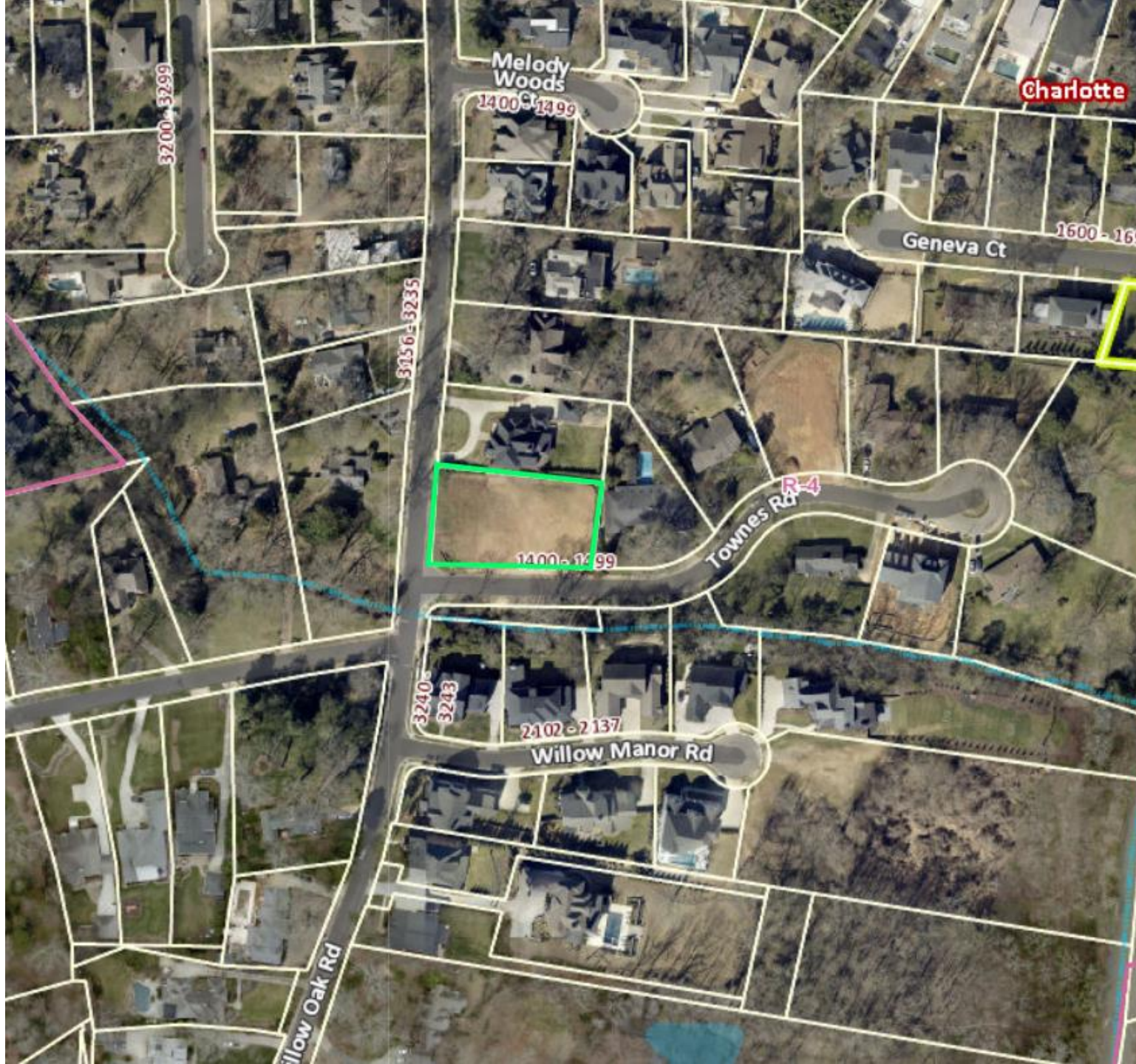
# Ex. 14





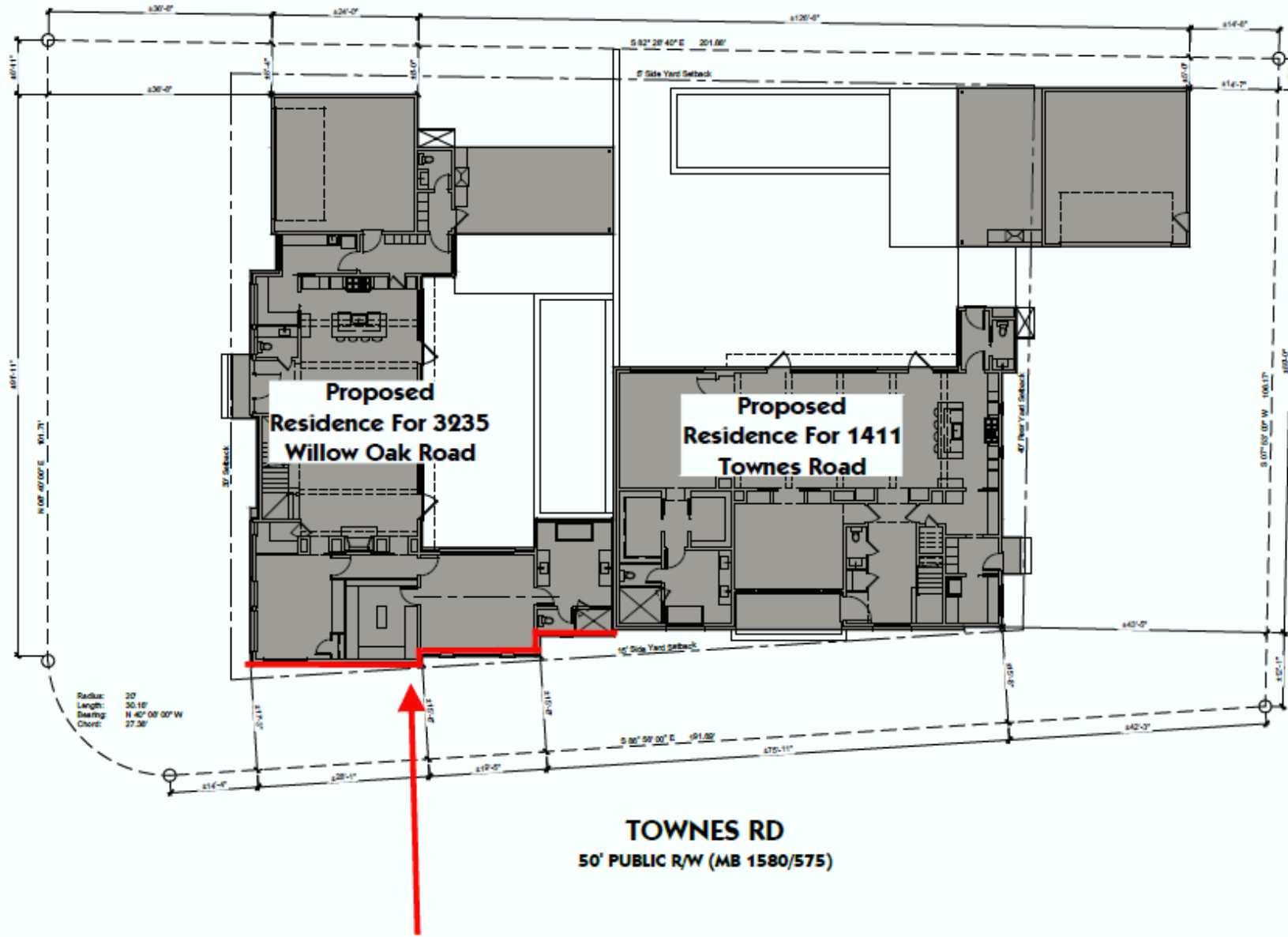
Ex. 15

Area



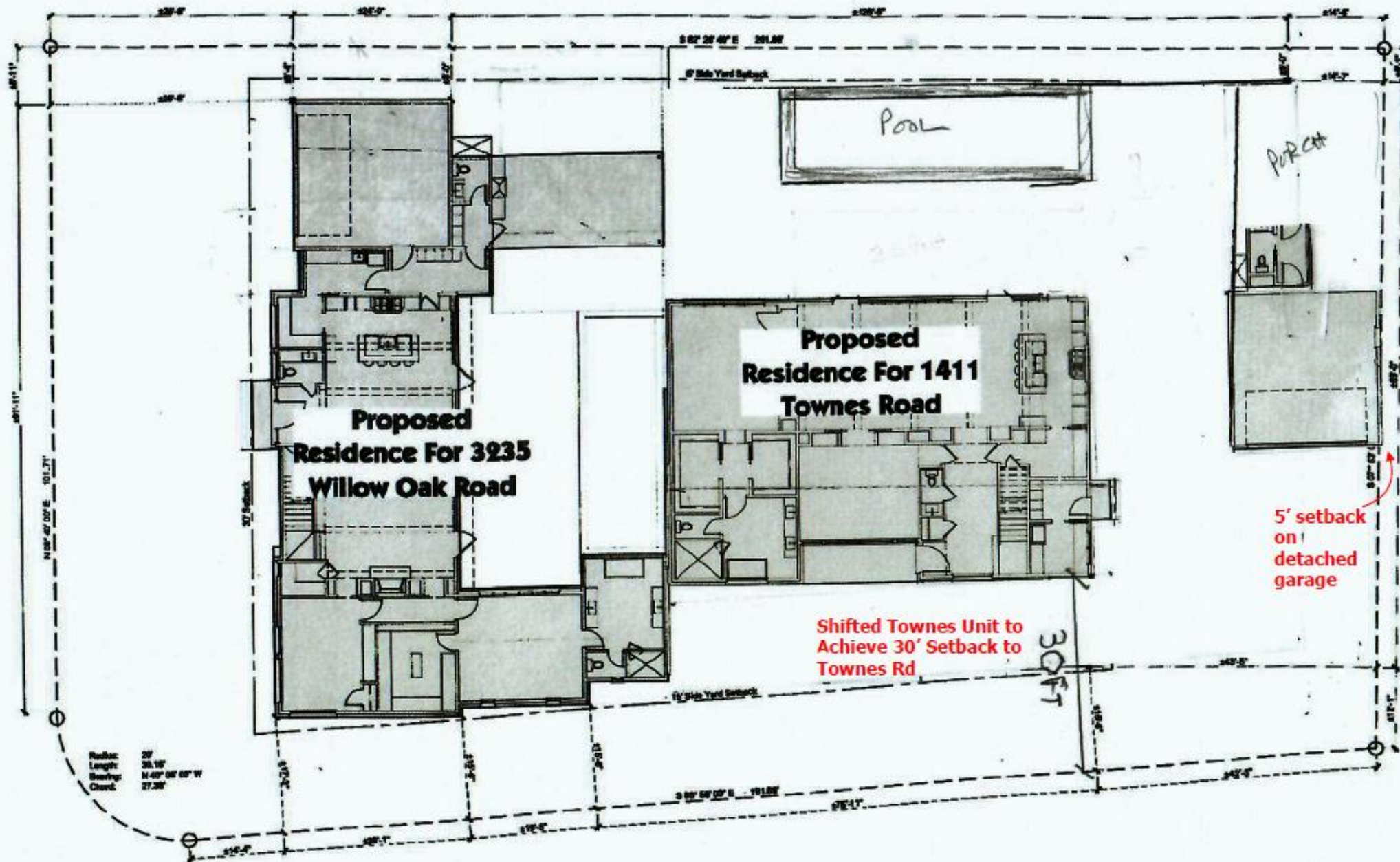
Ex. 16

**WILLOW OAK RD**  
40' PUBLIC R/W (MB 1580/575)



The highlighted wall belongs to the unit facing Willow Oak.

Ex 17



Ex. 18

# Variance Standards

(1) When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment ***shall vary*** any of the provisions of the Zoning Ordinance ***upon a showing*** of all of the following:

(a) **Unnecessary hardship** would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from **conditions that are peculiar to the property**, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship **did not result from actions taken by the applicant or the property owner**. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, **such that public safety is secured, and substantial justice is achieved.**

## a. Unnecessary Hardship

- The hardship results from the owner designing, constructing and completing substantial site work and expending substantial resources in reliance upon and under properly granted building permits in order to build a duplex with a 30' front setback on Willow Oak and a 15' side yard on Townes Road. Immediately prior to pouring footings, the City realized its error and issued a stop work order.
- The North Carolina Supreme Court has stated in such circumstances that: while “a municipality cannot be estopped to enforce a zoning ordinance against a [property owner] by the conduct of its officials in . . . permitting such violation . . . undoubtedly this conclusion entails much **hardship** to the [property owner].” *City of Raleigh v. Fisher*, 232 N.C. 629, 635, 61 S.E.2d 897, 902 (1950) (emphasis added); see also *Helms v. City of Charlotte*, 255 N.C. 647, 652, 122 S.E.2d 817, 821 (1961).
- The hardship only applies to the front unit where construction had begun.

## b. Hardship runs with the land

- The lot is a corner lot and one of the only lots on Willow Oak of sufficient size to support a duplex.
- Because of the permits being issued, design, a retaining wall and substantial grading and site preparation was done at the site in order to support the size and width of the approved duplex structure on the site, including into the additional 15' of side yard along Townes Road that was permitted to be built upon in the building permit.
- The hardship results from the approval of the permit which was issued and relied upon in good faith by the applicant in beginning construction on the property. This is not a personal hardship or common in the area.
- The retaining wall and grading were justified because of the 15' building line on Townes Road and because of the 10' sloping grade of the property.

## c. No self-created hardship

- The permits were relied upon in good faith by the applicant to begin construction on the site and the applicants were without knowledge of any issue until the City realized its error.
- The hardship results from the site work during construction pursuant to the permit and improper interpretation given by the planning department.
- The applicant has complied with the City's stop work request and has consulted with the City Zoning Administrator and Planning Director in seeking this variance to remedy the side yard encroachment issue.
- The applicant has constructed two other duplexes in the past but with two main distinctions: (1) not on corner lots and (2) R-8 zoning which does not require the "double setback" that R-3 through R-6 zoning requires for a duplex.
- The applicant did not know of the 30' setback on Townes and actually contacted building standards in order to consult on the setback before ever preparing plans.

# d1. Conformity with the neighborhood

- Because substantial grading and site work for the rear unit facing Townes Road had not been completed when the side yard error was discovered, the applicant has agreed that only the unit facing Willow Oak will be allowed to encroach 15' into the Townes Road 30' side yard. The unit facing Townes Road will be built at the required 30' side yard.
- The neighborhood is primarily detached single-family houses, with those on corner lots having a 15' setback.
- The slim lot across Townes Road which is closest to where the 15' reduction is being requested is owned by the Applicant and serves as a permanent buffer between the houses that back up to Townes Road. No houses are directly impacted.
- The use of the property as a duplex is consistent with the newly adopted 2040 Comprehensive Plan and it is likely that the new UDO will only require a 15' side yard on Townes Road. As such, this request is consistent with the spirit of the City's zoning ordinance.

## d2. Secures Public Safety and Substantial Justice

- If the variance is denied, the public will not benefit in any way. There are no adverse effects to the general public from the owner seeking to construct the duplex unit facing Willow Oak at a 15' side yard which is what a single-family structure would be allowed.
- The rear unit will respect the 30' side yard.
- Granting a variance in favor of the property owner does substantial justice and allows continued development under the existing design, substantial grading, and site work, which is the intended purpose of the zoning ordinance.

# Questions/Comments?

- Thank you for your time and consideration.
- As the four elements of the statutory variance standard have been met, we respectfully request that you grant our variance request.

OPPOSITION PRESENTATION  
(SUBMITTED BY NANCY S. LITWAK, WITH  
ROSENWOOD, ROSE & LITWAK, PLLC)

Variance 2021-089

# **Townes Road Variance Application Issues**



**Image #1:**  
Property along Townes Road looking west.



**Image #2:**  
Current property image, looking east. Future backyard of property.



**Image #3:**  
Current property image, looking north.



**Image #4:**  
Current property image (right side), looking west.



**Image #5:**

Safety Issue. Stop sign at Townes and Willow Oak. View is blocked looking north, towards Princeton. Issue will remain with a structure in place.



**Image #6:**

On Willow Oak looking south. View of cars coming from Townes is blocked. When structure is in place, the same issue will apply.





**Image #8:**  
Willow Oak and Princeton. View is blocked looking to the right/east, this could be the same issue at Willow Oak and Townes.



**Image #9:**  
Willow Oak and Princeton. Pulling forward slightly, the view is still blocked.

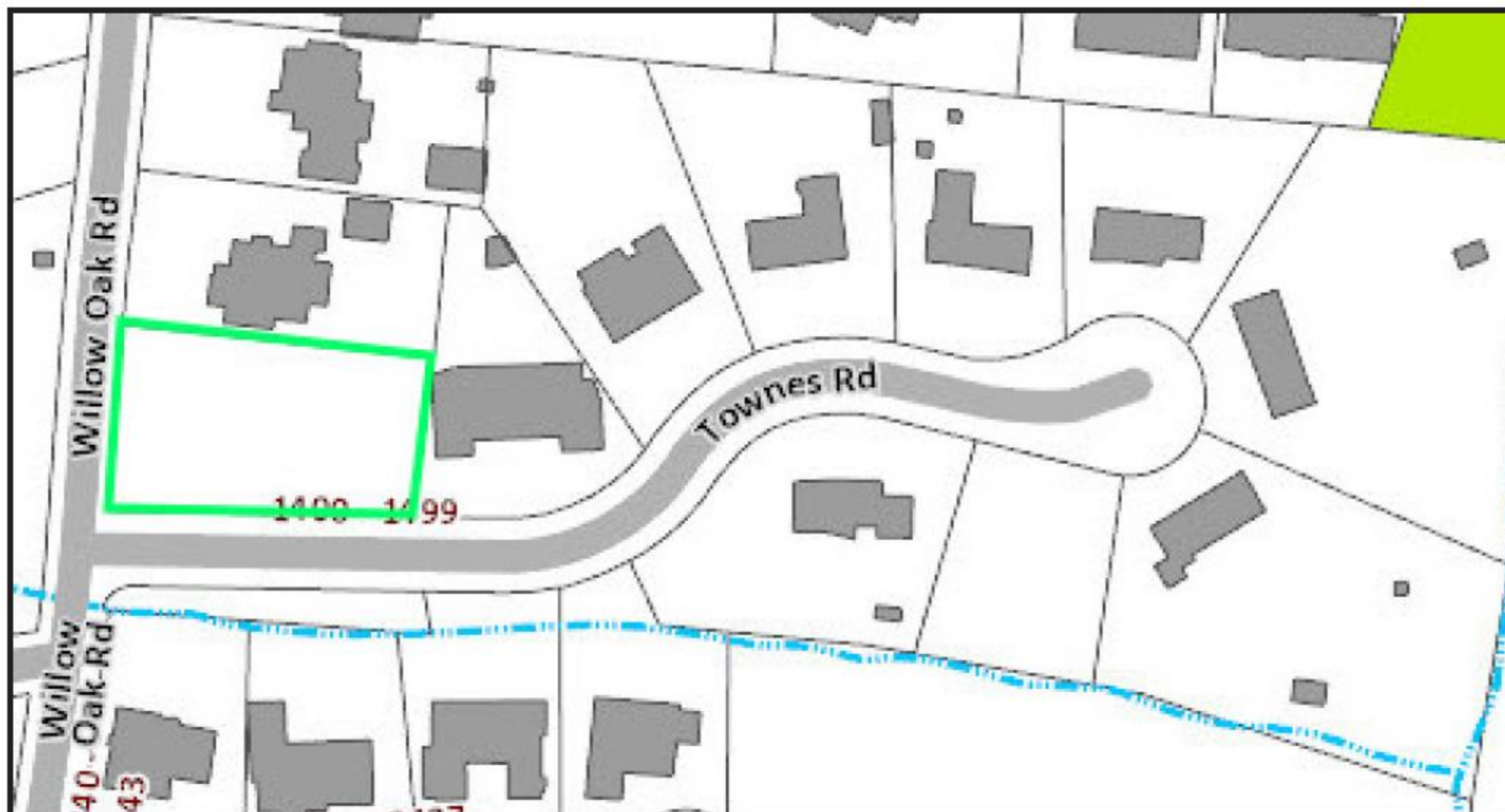


Image #10:

Unity of street design. All homes along Townes have the same setback.

Original Home





Welcome

WEBPERMIT 7.3

[View Permits](#) | [Links](#) | [Sign In](#)

## Building Permit

Permit # 83995143 Permit Type One/Two Family  
 Job # Permit Status Issued  
 Submittal # 406054402  
☐ Bundled Project  
☐ Disable Sub Insp Notifications

[Occupancy Visible](#)  
[Permit Document](#)
[Print Planset](#)

### Property

Address 1411 TOWNES RD Parcel # 15511336 Lot  
 Tax Jurisdiction CHARLOTTE Phase Open Block  
 Job Location: Front of lot, facing Willow Oak Rd

### Site Data

Land Area (sq. ft.) Parking Spaces Rqd  
 Front Street  
 Lot Details: ☐ Corner ☐ Through ☐ Irregular  
 Minimum Setbacks: Front 30.0 Left Side 5.0 Right Side 5.0 Rear 40.0

### Project

Project # N80734176  
 Project Name Willow Oak Duplex - Duplex  
 Type of Work New  
 Property Use: Residential - One/Two Family  
 USDC Code 303 - Two Family / Duplex  
 Occupancy Type R3 \* RESIDENTIAL - SINGLE FAMILY  
 Construction Type 50 \* WOOD FRAME/UNPROTECTED  
 Contract Cost \$483,000  
 Area:  
 Heated: 4154 sq. ft. Unheated: 1353 sq. ft. Deck: sq. ft.  
 Convert: Unheated to Heated Sq. Ft.  
 Renovated Area:  
☐ Shell: ☐ Basement ☐ Sprinkler System  
 # Stories:  
 # Units: 1  
☐ Interior Work ☐ Exterior Work  
 Work Details:  
 New, Two Family Dwelling (Duplex).

### One/Two Family or Modular:

# Rooms: 6 # Bedrooms: 5 # Baths: 4.0  
 Work Includes: ☐ Attached Carport ☐ Attached Garage  
☐ Masonry Fireplace

Multi-Family: # Handicapped Units:

Special Inspections:

### Costs

Construction Costs - Excluding atypical equipment costs over \$500K

Building Contract Cost: \$400,000.00  
 Sub Permits Contract Cost: \$83,000.00

Total Of All Equipment: \$0.00  
 Equipment Cost at 100%: \$0.00  
 Equipment Cost at 20%: \$0.00  
 Total Equipment Fee: \$0.00

### Contact Details

Owner/Tenant JAS-Am, Inc.  
 Phone (704) 507-8795  
 Address 5113 Piper Station Dr Suite 201

Architect  
 Phone  
 Address

License #

Bldg Contractor JAS-AM INC  
 Contractor ID XAS399 JAS-AM INC  
 Email Address brent@jasamgroup.com  
 Phone (704) 400-9503  
 Address

License # 20931

☐ Charge School Bond Account

### Lien Agent

Agent: Chicago Title Company, LLC  
 Phone: (888) 690-7384  
 Fax: (919) 489-5232  
 Email: support@ltlenc.com  
 Mailing Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601  
 Physical Address: 19 W Hargett ST Unit: 507, Raleigh, North Carolina 27601

### Inspection Notification Contacts

Contact Name Contact Phone Contact Fax Email or Text Message Address

### Trade Details

#### Electrical

Total Amps 400 Connections at 120 Volts 115  
 # Circuits 45 Connections over 120 Volts 6  
 Service Type New  
 Utility Company DUKE ENERGY

#### Mechanical

# Gas Connections 8 # Appliances 5  
 Utility Company PIEDMONT NATURAL GAS  
☐ Heat Pump ☒ Gas or Oil Furnace ☒ Chimney  
☒ Central Air Conditioning ☐ Gas or Oil Steam ☐ Stove  
☐ Electric Baseboard ☐ Gas Pack ☒ Gas Piping  
☐ Electric Ceiling ☐ Prefabricated Fireplace  
☒ Exhaust/Ventilation ☐ Refrigeration Only

#### Plumbing

# Fixtures 17 # Appliances 2

#### Utilities

Service Type	Existing		Private Service	
	Public Meter/Connection Individual	Master	Individual	Community
Water/Well	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer/Septic	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Sub-Permits

	Permit #	Issue Date	Subpermit Type	Status
Go	E4004641	Jun 25, 2021	E - Electrical	Issued
Go	M4004642	Jun 25, 2021	M - Mechanical	Issued
Go	P4004643	Jun 25, 2021	P - Plumbing	Issued

Document Uploads • Plans are only visible to the permit contractor

### Residential Plan Review Documentation

## Permit Documentation

## Fees

Permit Fee Type	Construction			
Permit Fee		\$2,839.02	Triple Fee	\$0.00
			NESHAP Fee	\$0.00
Fire Damage Fee		\$0.00	Fee Adjustment	\$0.00
Fax Fee		\$0.00	Total Fee	\$2,839.02
Home Owner Recovery Fund		\$10.00		
Fast Track Fee		\$0.00		
Commercial Surcharge Fee		\$0.00		

## Miscellaneous

Entry Date	06/12/2021 10:55 am	Entered By	JAS-AM INC
Issue Date	06/25/2021 12:00 am	Issued By	Gomez, Lorena

## Remarks

	Last Updated By	Last Update Date	Note
Go	Gomez, Lorena	Jun 25, 2021	Residential Plan Review needed
Go	Gomez, Lorena	Jun 25, 2021	CO held for final inspection
Go	Gomez, Lorena	Jun 25, 2021	HVAC equipment may encroach into set-back area by 50%.
Go	Gomez, Lorena	Jun 25, 2021	Zoning Setbacks listed on the permit is for the footprint of the entire building. Both units of the duplex project must be in compliance within the limits of the building footprint setbacks.
Go	JAS-AM INC	Jun 12, 2021	Residential Plan Review needed
Go	JAS-AM INC	Jun 12, 2021	Complete new construction of a duplex on a vacant lot. Footings, foundation, and framing. Window and exterior door install. Asphalt shingle roof install. Full brick veneer. Rough in of electrical, mechanical, and plumbing. Insulation, drywall and trim installation. Flooring, tile, and paint. Trim out of electrical, mechanical, plumbing. Final grade and landscaping.

This permit will expire if work either has not started within 6 months or is discontinued for a period of 12 months. No credit or refund will be given unless applied for within 120 days after a permit has expired.

☐ Is Current User The Contractor

**Submit**   **Cancel**



CASE NO.  
2021-092  
RESIDENTIAL  
REAR YARD  
VARIANCES

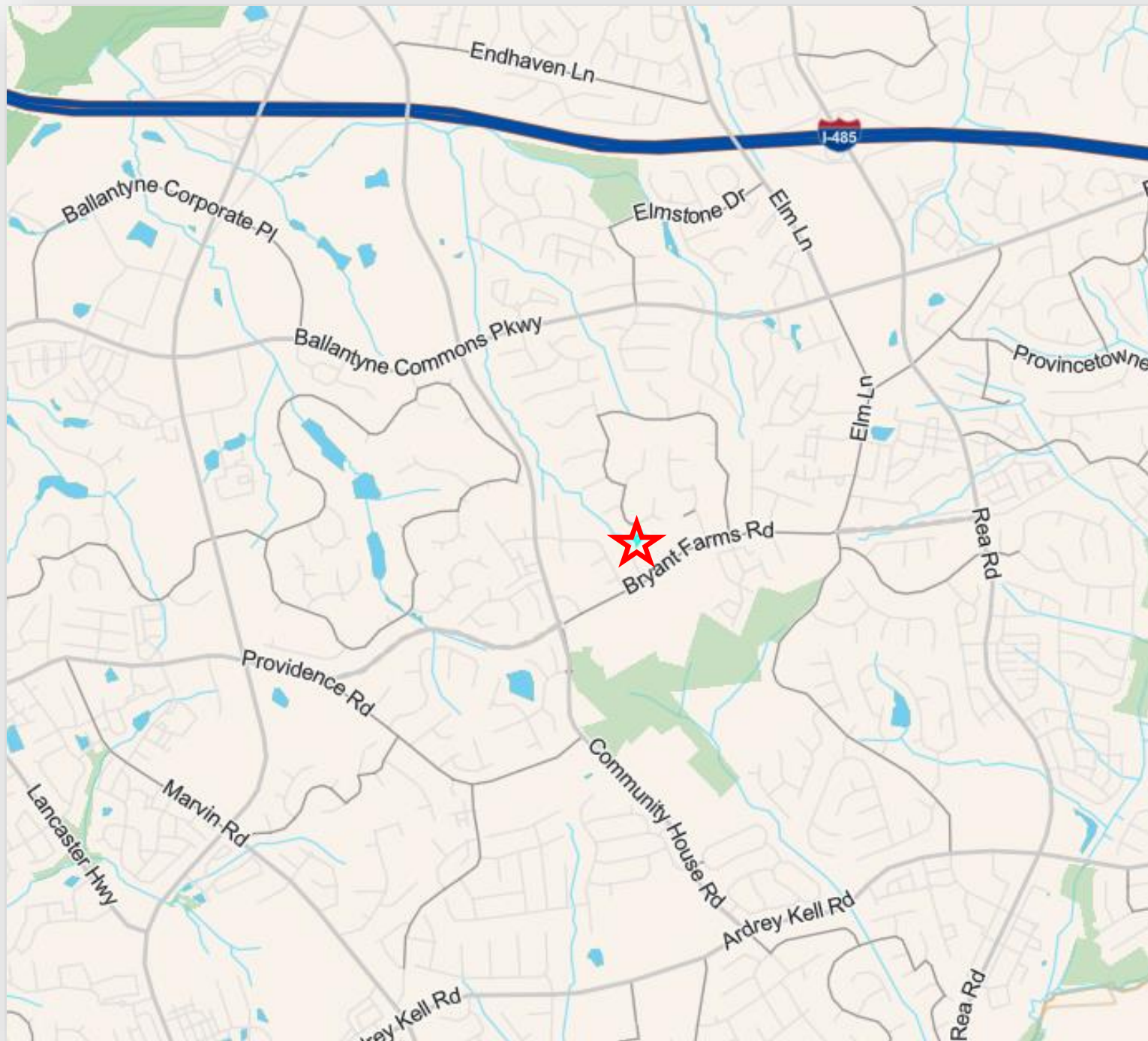
***Douglas and Paula Gentile for property located at 9319 Hanlin Court, tax parcel 223-203-31.***

Requesting two variances:

1. A 6 foot variance from the 30 foot rear yard for compliance of the principal structure.
2. A variance from the 25% encroachment allowance to allow a deck to encroach 53% into the required 30 foot rear yard.

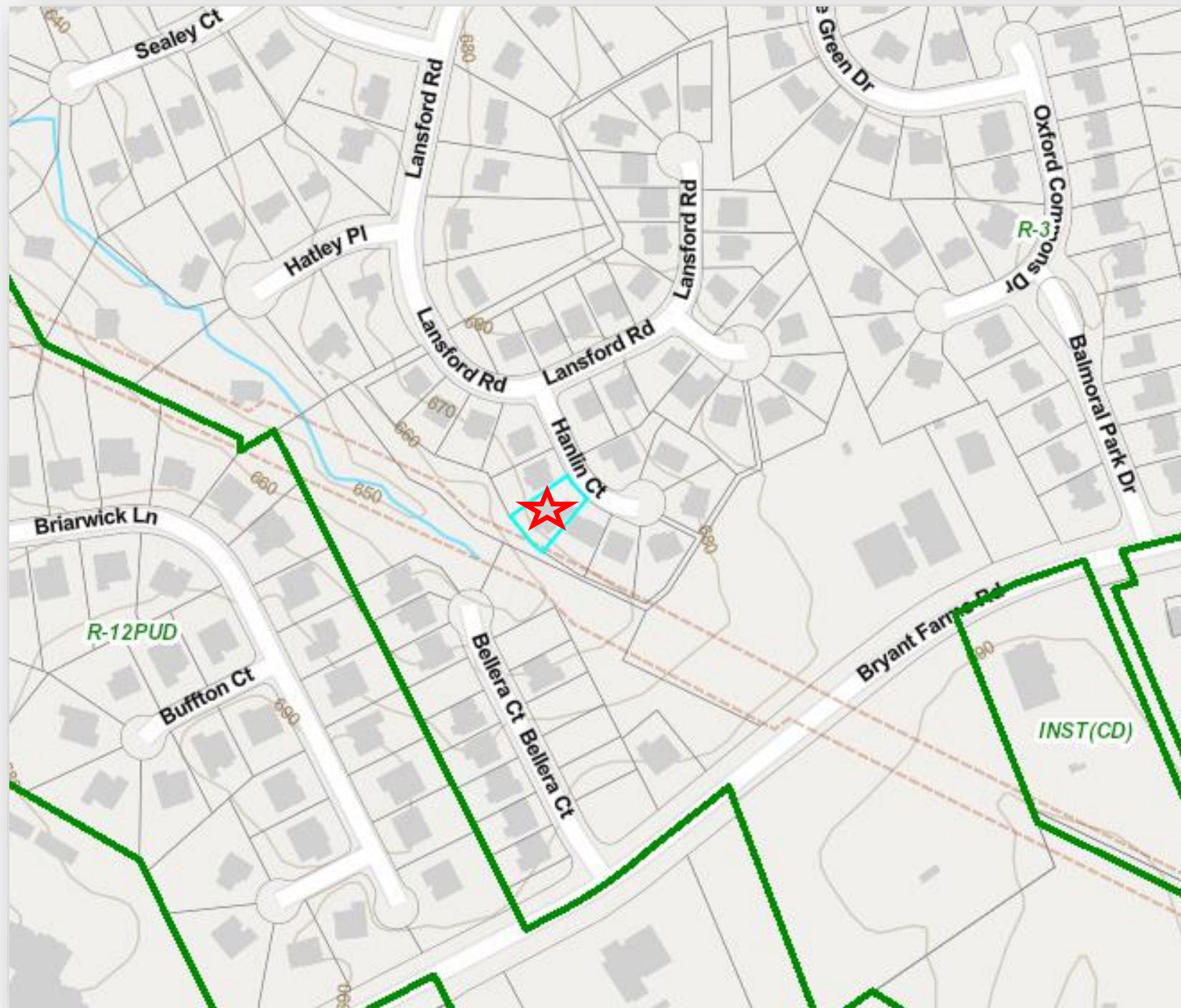
GOVERNMENT  
EXHIBIT  
2021-092  
#1

VICINITY MAP



GOVERNMENT  
EXHIBIT  
2021-092  
#2

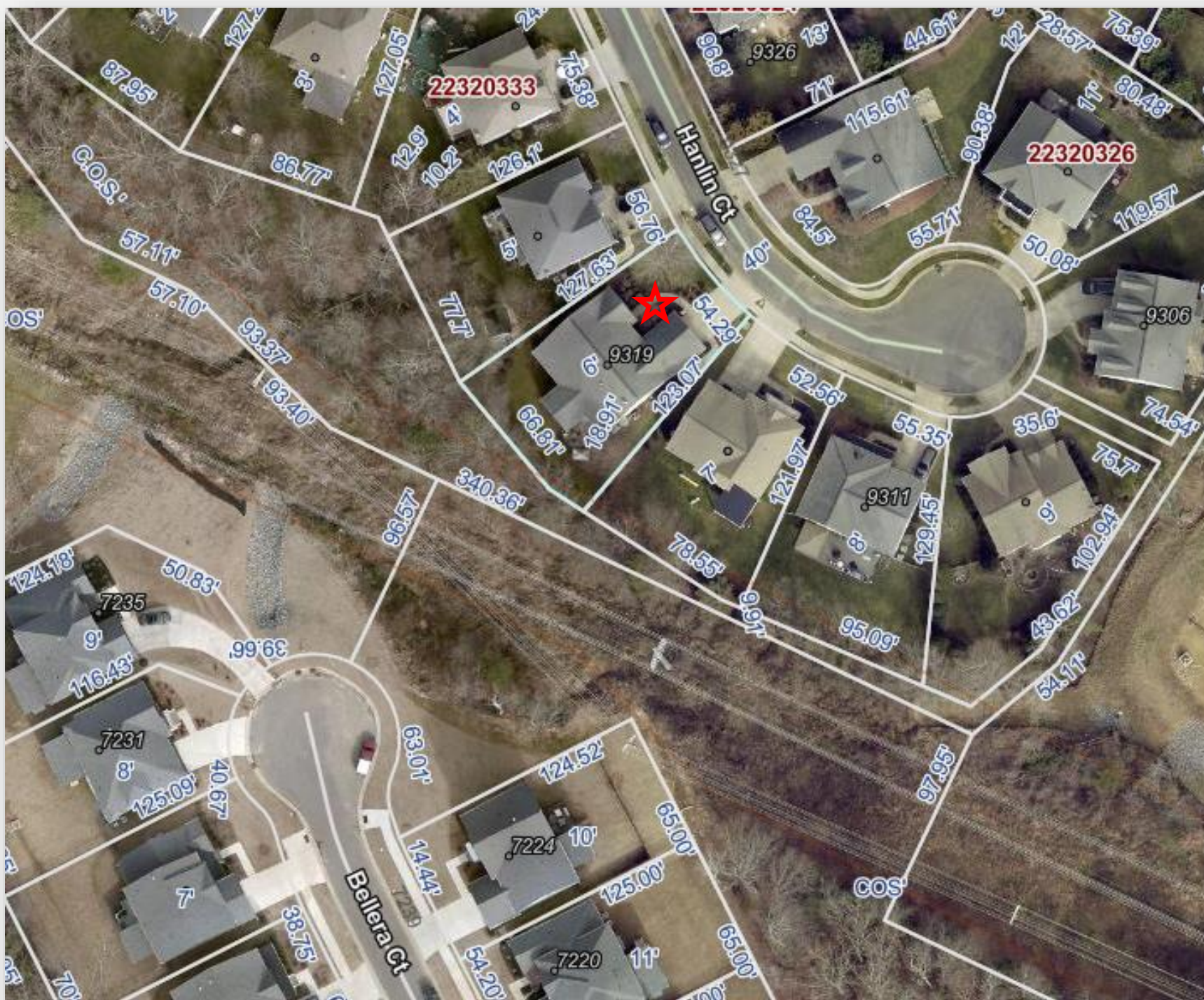
ZONING MAP



Zoning  
R-3 (Single Family)

GOVERNMENT  
EXHIBIT  
2021-092  
#3  
  
AERIAL MAP

GOVERNMENT  
EXHIBIT  
2021-092  
#3  
  
AERIAL MAP



GOVERNMENT  
EXHIBIT  
2021-092  
#4

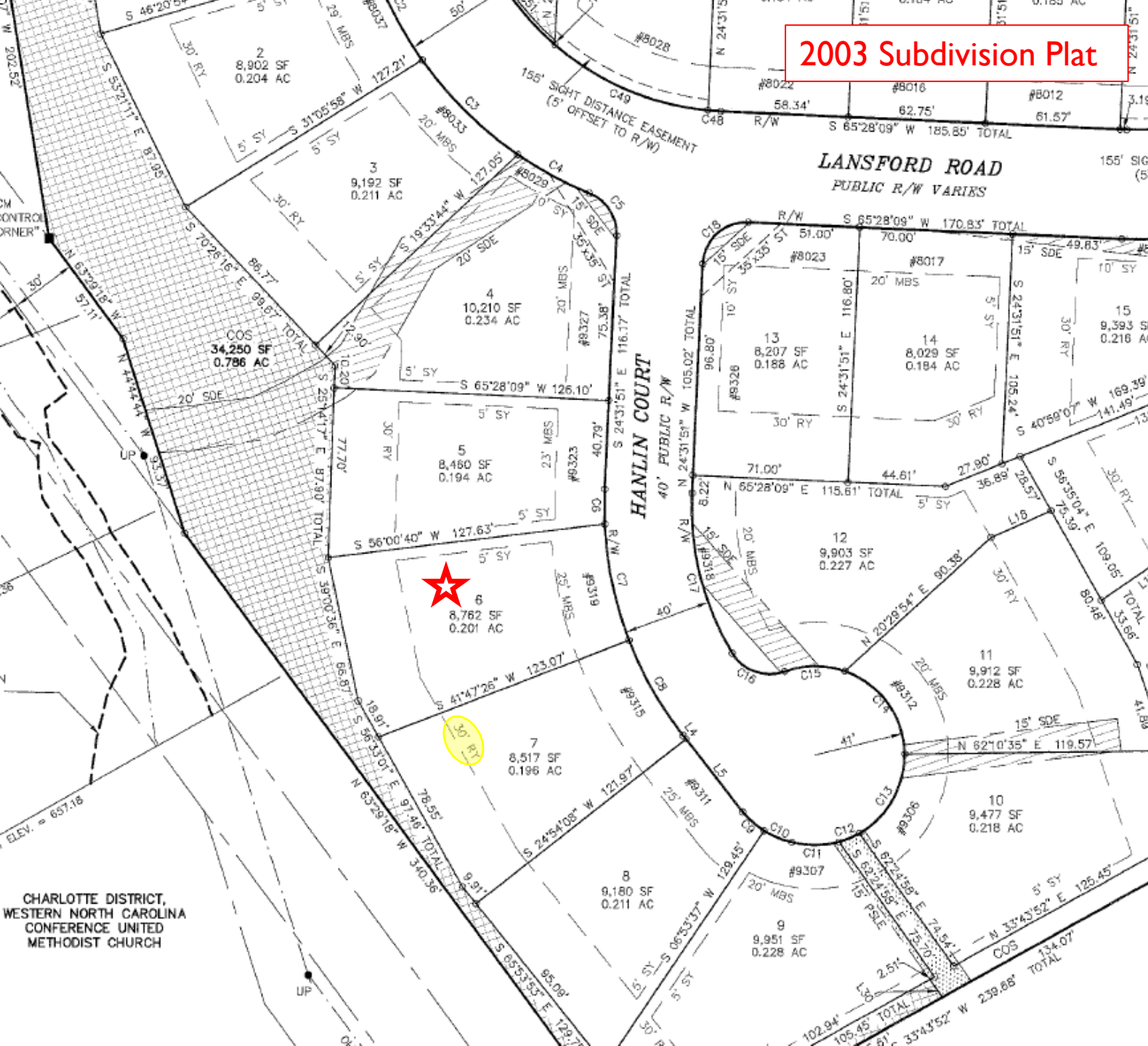
AERIAL CLOSE UP



## 2003 Subdivision Plat

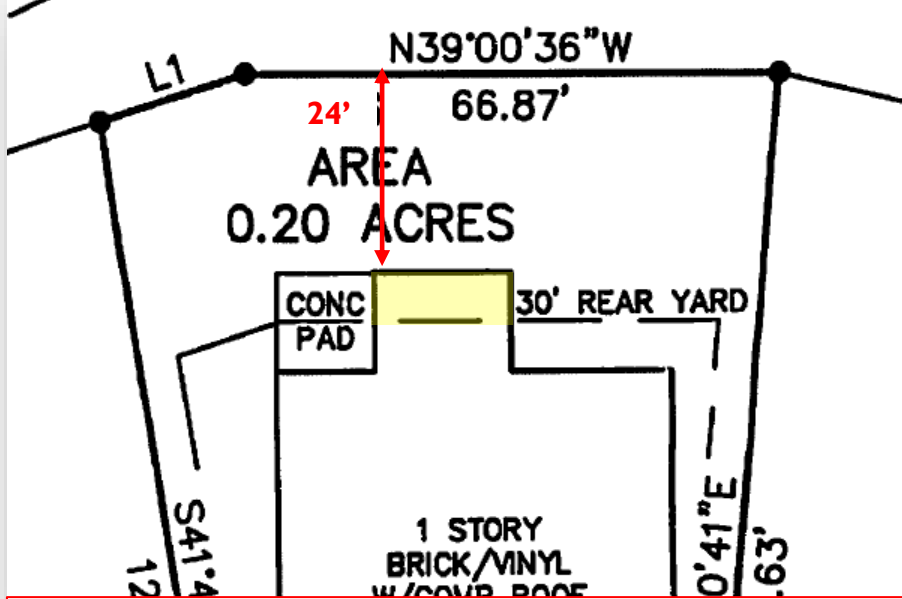
GOVERNMENT  
EXHIBIT  
2021-092  
#5

BACKGROUND



## 2005 Home





Variance #1:

**Zoning Ordinance:**

R-3 Cluster Rear Yard: 30 Ft

**Variance Request:**

6 Ft from the 30 Ft Rear Yard for Compliance of Existing Home (for a 24 Ft Rear Yard)



Variance #2:

**Zoning Ordinance:**

25% Rear Yard Encroachment Allowance for Decks

**Variance Request:**

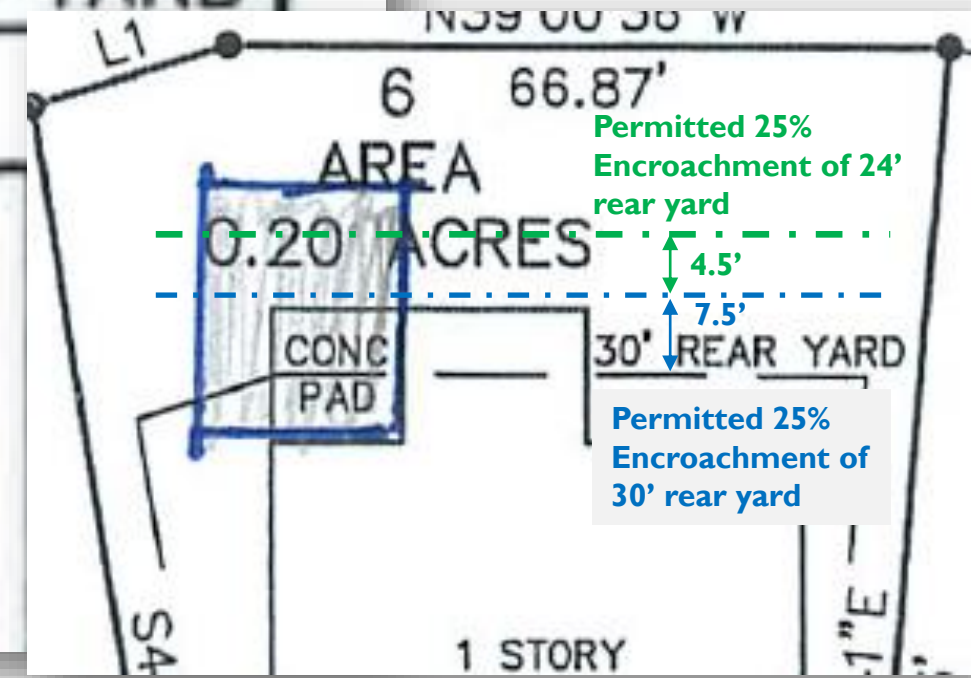
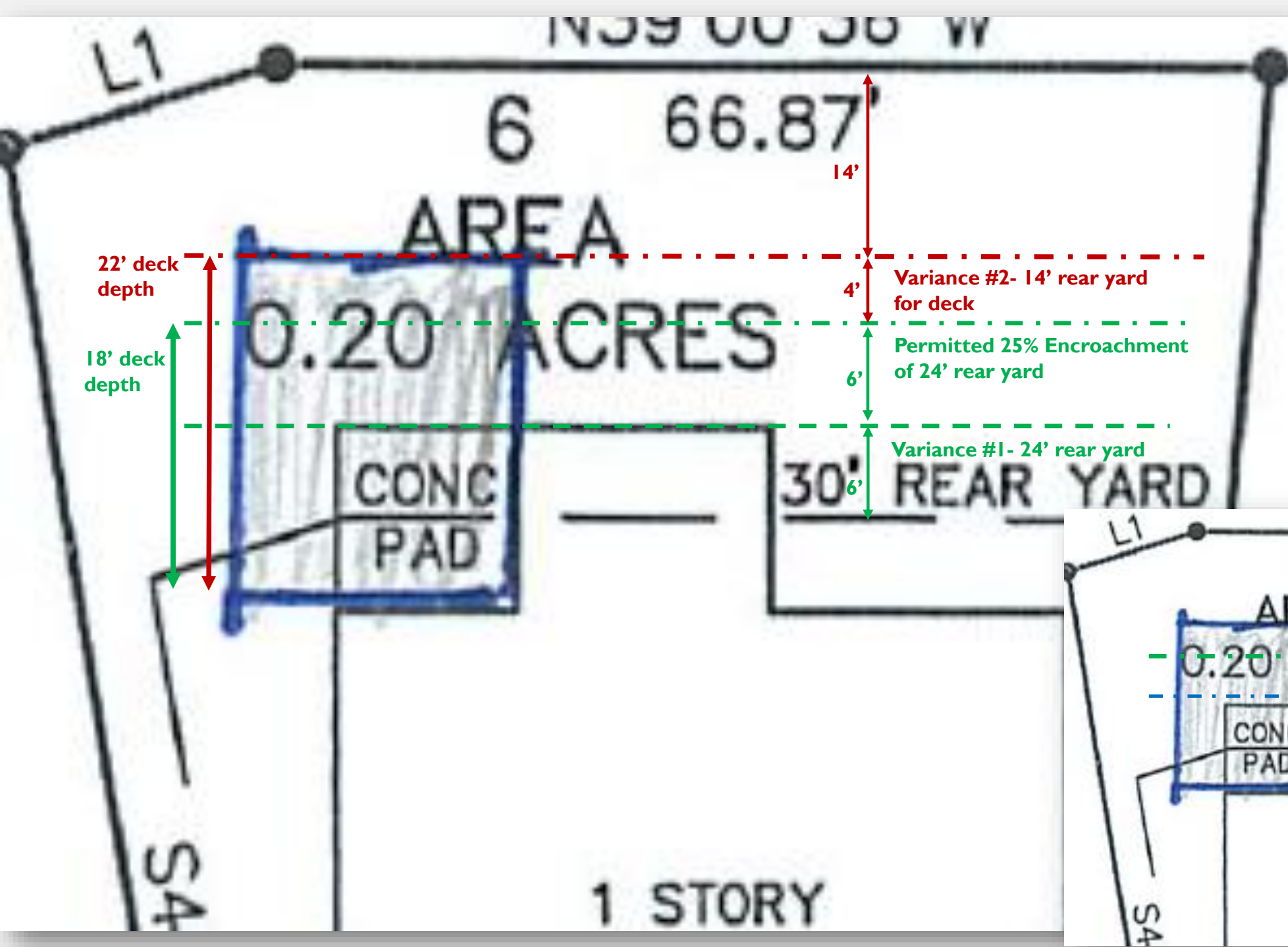
53% (16 Ft) Encroachment into 30 Ft Rear Yard for Proposed Deck (for a 14 Ft Rear Yard for Deck)

GOVERNMENT  
EXHIBIT  
2021-092  
#6

VARIANCE  
REQUESTS

GOVERNMENT  
EXHIBIT  
2021-092  
#7

CONSIDERATIONS



GOVERNMENT  
EXHIBIT  
2021-092  
#8  
  
CONSIDERATIONS

Variance #1 – 6 Ft from 30 Ft rear yard for existing home.

Staff supports the requested variance.

The hardship does not result from actions taken by the applicant

- The rear yard encroachment existed when the applicants purchased the home.
- The home was permitted and the applicant provided a copy of the Certificate of Occupancy from 2005.
- The property owner states they were not aware there was an issue with the rear encroachment until 2021.

The variance will not detract from the character of the area.

- The rear encroachment is centered toward the middle of the property, and would not significantly detract from the pattern of the neighborhood’s residential backyard character.
- The rear yard abuts Common Open Space for the subdivision, separating the encroachment area from impact on other single family homes.

The granting of the variance for the 2005 home ensures safety since the work was permitted and inspected.



GOVERNMENT  
EXHIBIT  
2021-092  
#9

CONSIDERATIONS

Variance #2 – Variance from the 25% encroachment allowance to allow a proposed deck to encroach 53% into the required 30 foot rear yard.


Staff finds that the requested variance does not meet all of the criteria within the Zoning Ordinance for granting a variance.

The hardship is caused by the applicant.

- The building permit for the proposed deck indicated that the rear yard was 30 feet.
- The plot plan submitted with the building permit application showed the wrong lot.
  - The lot shown on the plot plan had permitted building area in the rear yard in which to construct a deck
  - The subject lot does not have permitted building area in the rear yard in which to construct a deck.
  - Staff believes the permit was issued due to the wrong plot plan shown on the application.

There is no hardship resulting from a peculiarity of the property.

- Granting variance #1 will allow a deck to encroach 6 feet into the 24 foot rear yard, which is 4.5 feet greater than would be permitted with the 30 foot rear yard.
- Granting variance #2 would permit a deck 22 feet in depth. Granting variance #1 will permit a deck 18 feet in depth, a difference of 4 feet.



**PLOT PLAN FOR PERMIT APPLICATION**  
ONE/TWO FAMILY, MODULAR, MOBILE HOME OR ZONING USE

9319

Street #:

Hanlin

(N,S,E,W) Street Name

22320331

Tax Parcel #:

Ct

(AV, RD, etc.)

Suite #/Units

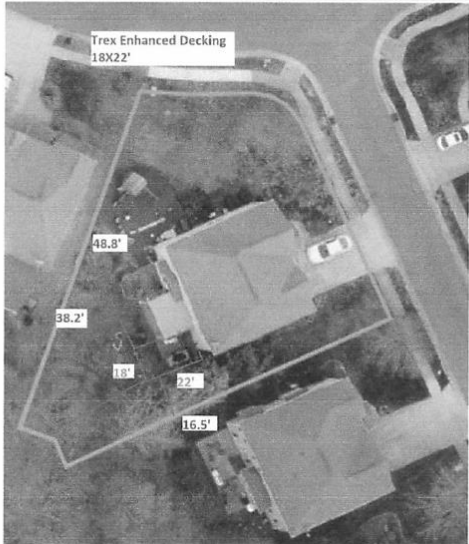
Permit #:

25297

Job #:

**INSTRUCTIONS:**  
In the space provided, draw plot plan as neatly and accurately as possible, from survey if available. Separate application and plot plan required for each building.  
  

1. Draw street(s) and right-of-way(s)
2. Draw property lines with dimensions.
3. Draw proposed and existing buildings showing any attached porch(es), deck(s), chimney(s), carport(s) or garage(s), etc...
4. Show distances of buildings from property lines or other structures.
5. Show all major utility towers, when applicable.



Unnecessary hardships do not result from strict application of the Ordinance.

- The hardship is the result of actions proposed by the applicant and the desired location of the proposed deck.
- The applicant has the option to shorten the proposed depth of the deck 4 feet for compliance with the 25% encroachment allowance if variance #1 is granted.

The requested variance is out of character with neighboring properties, which do not appear to have deck encroachments and appear to observe the 30 foot rear yard in aerial photography.

GOVERNMENT  
EXHIBIT  
2021-092  
#10

CONSIDERATIONS



GOVERNMENT  
EXHIBIT  
2021-092  
#11

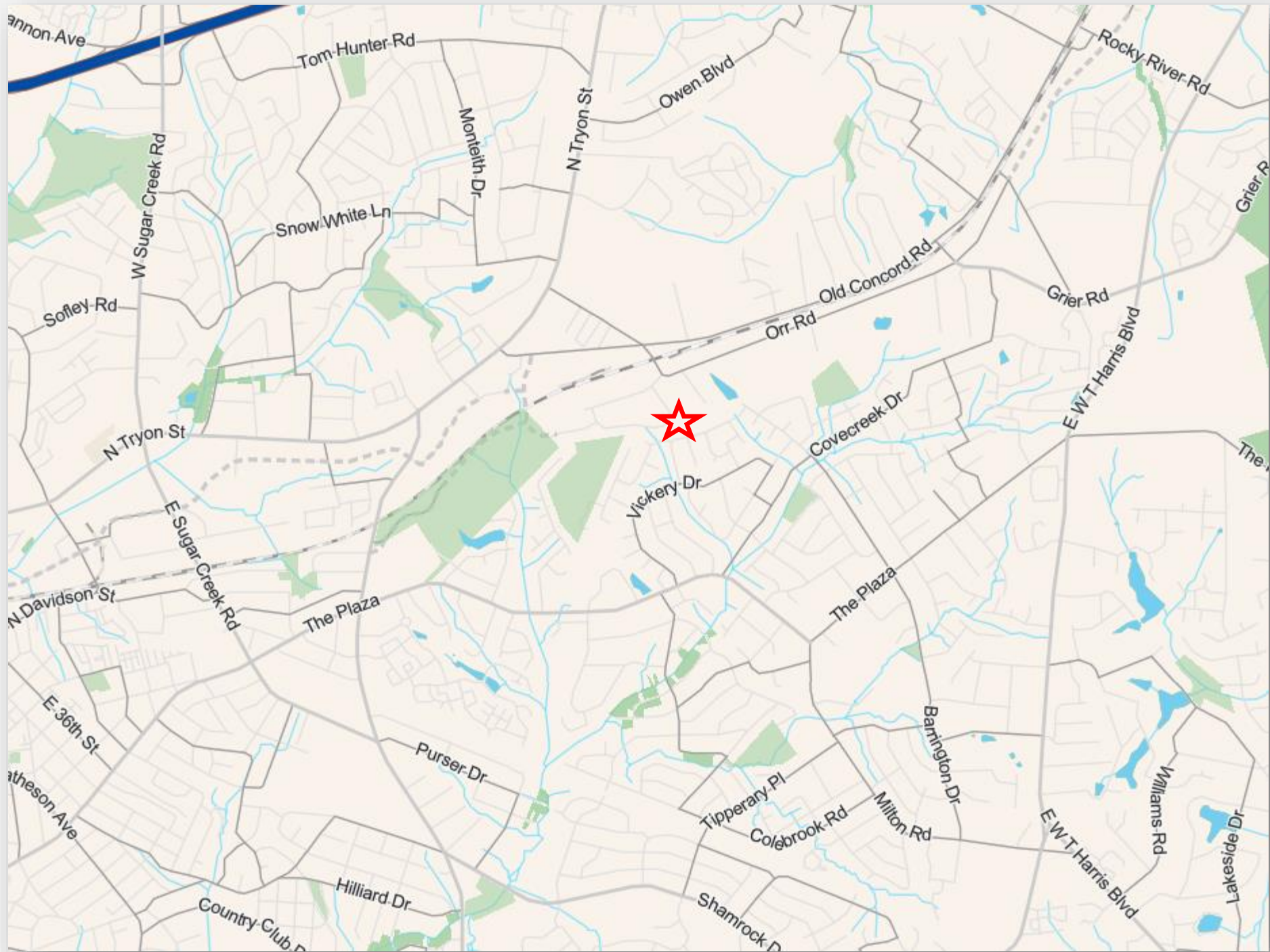
PHOTO



CASE NO.  
2021-078  
APPEAL OF  
COMMON LAW  
VESTED RIGHTS  
DETERMINATION

***Joseph K. Gatewood for property located at 1700  
Industrial Center Circle, tax parcel 097-223-05.***

Appeal of the Zoning Administrator's interpretation that the subject property has common law vested rights from previous governmental approvals.



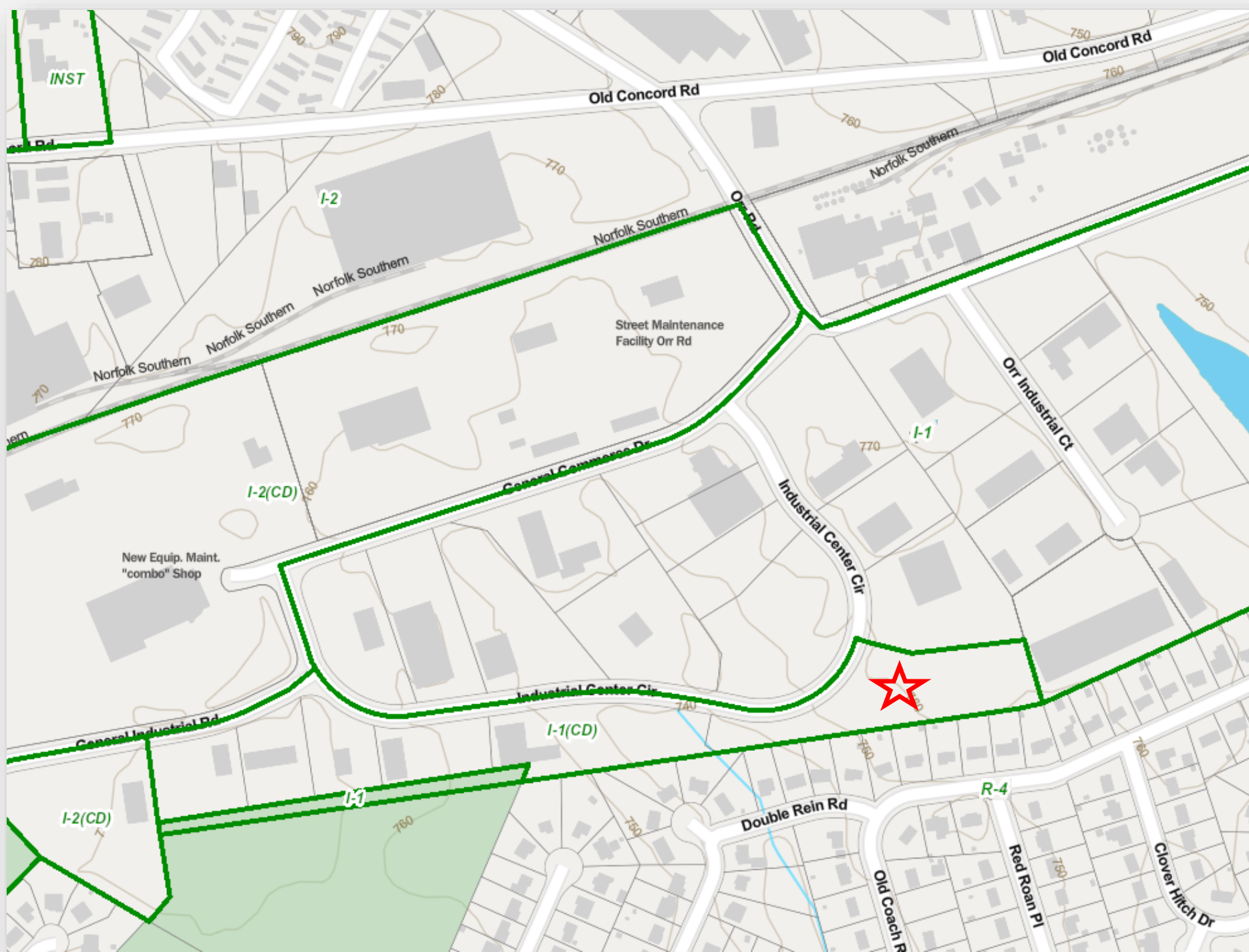
GOVERNMENT  
EXHIBIT  
2021-078  
#1

VICINITY MAP

GOVERNMENT  
EXHIBIT  
2021-078  
#2

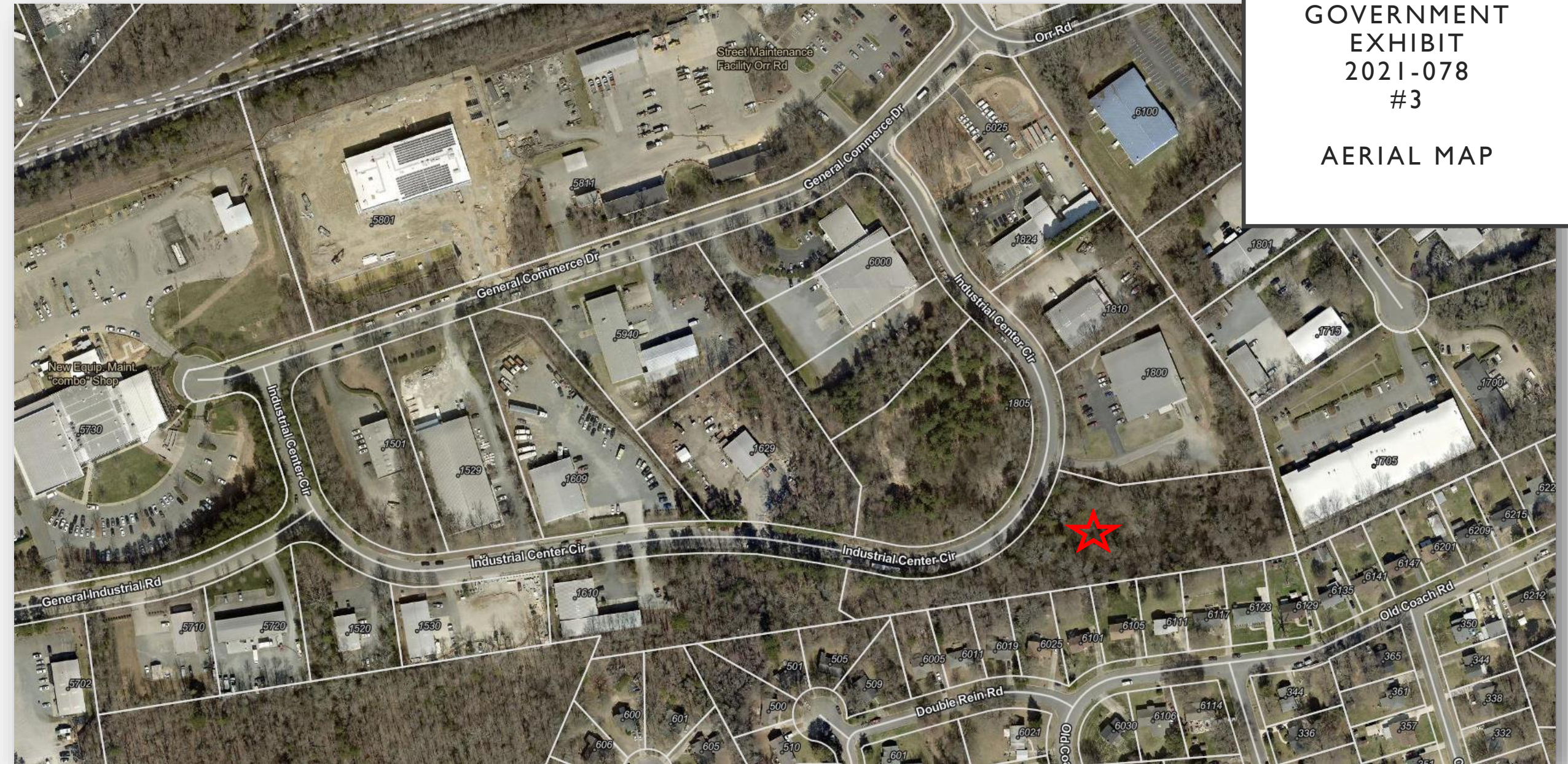
ZONING MAP

Zoning  
I-1(CD)  
(Light Industrial,  
Conditional)



GOVERNMENT  
EXHIBIT  
2021-078  
#3

AERIAL MAP



GOVERNMENT  
EXHIBIT  
2021-078  
#4

CLOSEUP  
AERIAL MAP



# VESTED RIGHTS

## Definition of Vested Rights

A vested right is the right to continue a use or complete a project as it was approved, despite subsequent changes to the ordinance. A vested right precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations.

## How to Establish Vested Rights

A vested right may be established

- as provided for in NC General Statute 160D-108 (statutory vested rights) or
- by common law (common law vested rights).

## Process to Claim Vested Rights

A person claiming a vested right may submit information to substantiate the claim and request a determination from the zoning administrator. That determination may be appealed to the board of adjustment. Alternatively, a person claiming a vested right may bring an original civil court action under G.S. 160D-1403.1.

### § 160D-108. Permit choice and vested rights.

(c) Vested Rights. – Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

- (1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.
- (2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.
- (3) A site-specific vesting plan pursuant to G.S. 160D-108.1.
- (4) A multi-phased development pursuant to subsection (f) of this section.
- (5) A vested right established by the terms of a development agreement authorized by Article 10 of this Chapter.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(h) A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1. (Per NC General Statute 160D-108.(h)).

GOVERNMENT  
EXHIBIT  
2021-078  
#5

VESTED RIGHTS

## Common Law Vested Rights

Nothing in the provisions or standards of statutory vested rights precludes an individual from seeking common law vested rights. In order to establish common law vested rights a property owner must show that he or she made substantial expenditures relying in good faith on a valid governmental permit and he or she would experience detriment if required to comply with a new regulation.

North Carolina courts have long recognized vested rights and have set forth a test for establishment of vested rights. In order to show vested rights, the owner must:

- (i) obtain a valid governmental approval;
- (ii) reasonably rely upon the approval;
- (iii) make a substantial expenditure;
- (iv) act in good faith;
- (v) experience detriment to comply.

Vested rights run with the land, so a new owner enjoys the same rights and responsibilities under a vested right as the prior owner.

GOVERNMENT  
EXHIBIT  
2021-078  
#6

COMMON LAW  
VESTED RIGHTS

## Common Law Vested Rights – Factors for Determination

Valid governmental approval. An owner must obtain an affirmative governmental action concerning the property or project. This could be a conditional use permit, a subdivision plat approval, a building permit, or some other site-specific affirmative action by the local government. This is more than merely relying on the general zoning district or advisory zoning compliance letter. If a permit was mistakenly issued, the permit is insufficient for establishing vested rights.

Reasonable reliance. The expenditure must be in reasonable reliance on the valid governmental approval. In other words, the expenditure must be after the permit approval and dependent on the permit approval. Money spent in preparation for the application (prior to approval) does not count as an expenditure for the vested right.

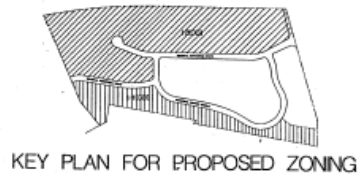
Substantial expenditure. The owner must make some substantial expenditure—of time, effort, or money—in reliance on the valid governmental approval. The expenditure must be substantial in relation to the overall project. Minor site work may be substantial for a small accessory building, but minor site work may not be substantial for a large-scale development. Actual construction is not necessary. Expenditures on binding contracts, construction materials, or equipment may be sufficient.

Good faith. The owner must act in good faith to obtain a vested right. This means that the owner sought the governmental approval in the normal course of business and made expenditures to reasonably pursue the development. An owner would not be acting in good faith if the owner misled the local government or neighbors, rushed an application for a conditional use permit to beat a rule change, or hastily began site work for an appearance of substantial expenditure.

Experience Detriment. The owner must show that he will suffer harm if required to comply with new rules. If the previously-approved project can comply with the new rules without any harm to the owner, then there is no basis for treating the owner differently.

GOVERNMENT  
EXHIBIT  
2021-078  
#7

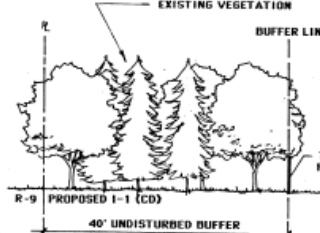
CONSIDERATIONS  
FOR COMMON LAW  
VESTED RIGHTS



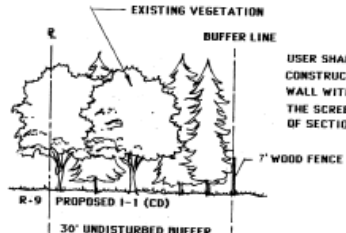
## WOOD FENCE

APPROPRIATE MAINTENANCE OF THE WOODEN FENCE SHALL BE A CONTINUING OBLIGATION OF THE RESPECTIVE OWNERS OF THE LOTS ON WHICH THE WOODEN FENCE IS LOCATED.

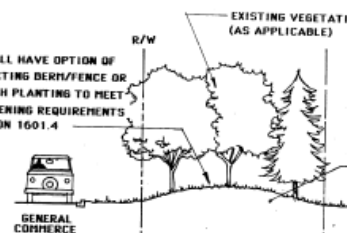
## SECTION A-A



## SECTION B-B



## SECTION C-C



# GOVERNMENT EXHIBIT 2021-078 #8

# CONDITIONAL REZONING PETITION 1990-073

GCC PARTNERS  
320 SOUTH TRYON STREET  
SUITE 202  
CHARLOTTE, NC 28202

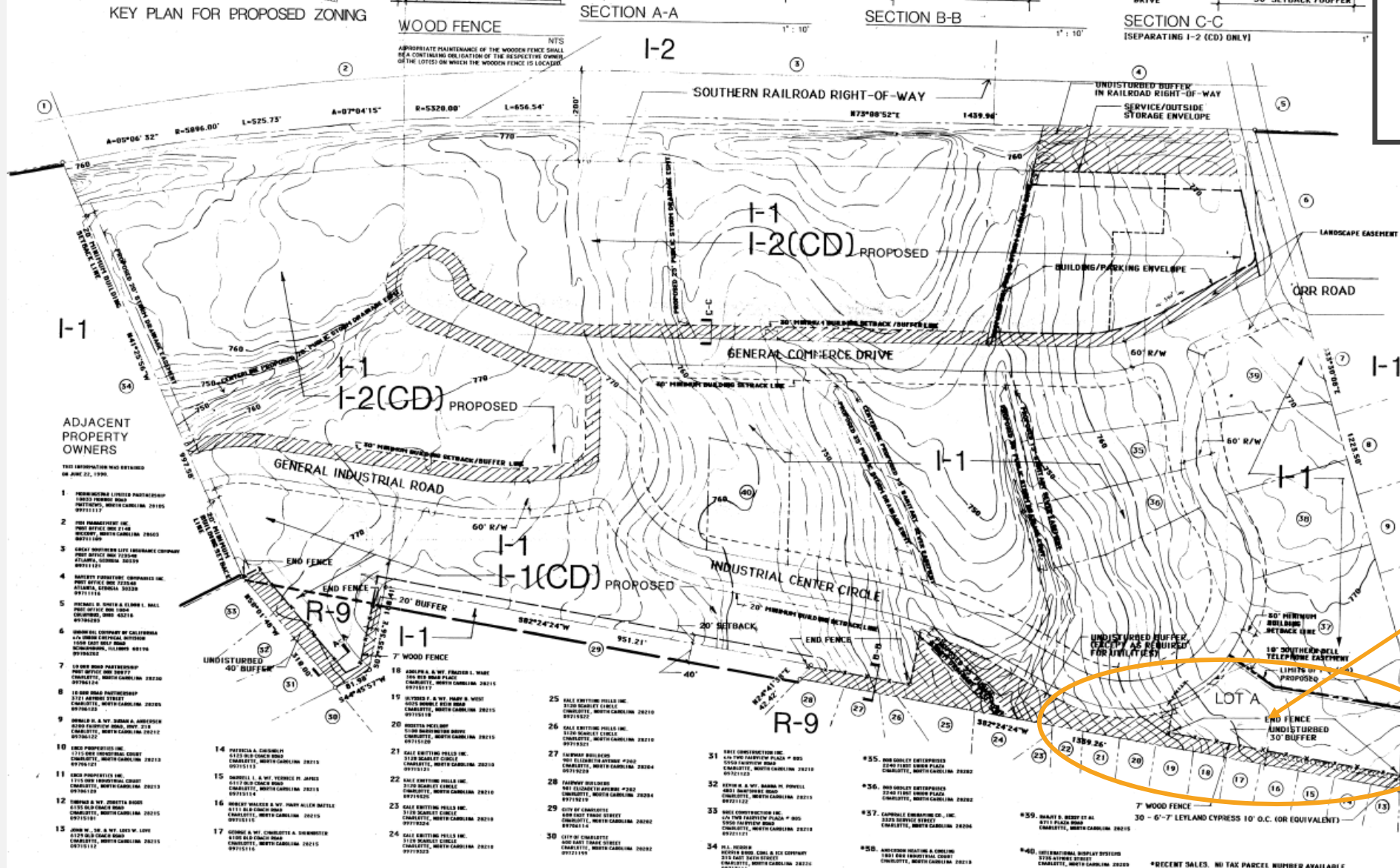
GENERAL COMMERCE CENTER  
Charlotte, North Carolina

CONDITIONAL MASTER PLAN  
SEE ADMINISTRATIVE APPROVAL

Subject Property

APPROVED BY CITY COUNCIL  
DATE 10/15/90

10-1-90 PER PLANNING COMMISSION COMMENTS  
8-27-90 PUBLIC HEARING DOCUMENT  
SCALE: 1" = 100'



ACTUAL SIZE AND SHAPE OF PARCELS PERMITTED IN THE DISTRICT MAY BE ADJUSTED BASED UPON FINAL DESIGN, MARKETING AND TENANT NEEDS AND MAY BE CONFINED TO ALLOW FEWER LOTS OR FURTHER SUBDIVIDED TO CREATE MORE LOTS THAN ARE SHOWN SUBJECT TO ORDINARY SUBDIVISION REGULATIONS, PROVIDED, HOWEVER, THAT NO LOT SHALL CONTAIN LESS THAN 40,000 SQUARE FEET.

- [illegible]

- ### B. 3-3 (CD) DISTRICT

3. THIS PLAN REPRESENTS THE CREATION OF A DISTRICT FOR THE DEVELOPMENT OF A PORTION OF THE INDUSTRIAL SUBDIVISION KNOWN AS THE 24th AND 60th AVENUE CENTER WHICH IS BOUNDARY BOUNDARIES BY GENERAL INDUSTRIAL ROAD AND INDUSTRIAL CENTER CHASE TO THE NORTH AND PROPERTIES OF THE BRIDGEWOOD RESIDENTIAL SUBDIVISION AND CITY OF CHANGELIGHT PARK AND RECREATION PROPERTY TO THE SOUTH. THE ROADWAY CONSTRUCTION, INCLUDING GROUND, INDUSTRIAL ROAD AND INDUSTRIAL CENTER CHASE, IS APPROXIMATELY 40 FEET WIDE. THE INDUSTRIAL SUBDIVISION PROPERTIES ARE NOW INSTALLED. THE ACTUAL SIZE AND SHAPE OF PARCELS PERMITTED IN THE DISTRICT MAY BE ADJUSTED BASED UPON FINAL ENGINEERING AND TENANT NEEDS AND MAY BE ADJUSTED TO ALLOW FUTURE LOTS BE FURTHER SUBDIVIDED TO CREATE MORE LOTS THAN ARE SHOWN SUBJECT TO

2. PERMITTED AND EXCLUDED USES. PERMITTED USES WITHIN THE INDICATED DISTRICT SHALL INCLUDE ONLY THOSE USES PERMITTED IN I-1 DISTRICTS, ALSO IN I-2 DISTRICTS AND THE FOLLOWING USES WHICH ARE OTHERWISE PERMITTED IN I-1 DISTRICTS, CONVENTS, PARKS, CEMETERIES, ESTABLISHMENTS OF ANY TYPE, PAVILION DISTRIBUTION FACILITIES AS A PRINCIPAL USE, RECREATION, PUBLIC UTILITIES, FOOD PROCESSING OF ANY TYPE, SANITARY LANDFILL AND GARBAGE DISPOSAL, LANDFILLS, BACE TRUCKS OR CONDUITS OF ANY TYPE, VETERINARY HOSPITALS AND COMMERCIAL CEMETERIES, NONPACED STAIRS, AND DEPOSITION LANDFILLS OF ANY

3. BUILDING HEIGHT. NO BUILDINGS IN THE DISTRICT SHALL EXCEED A HEIGHT OF 30 FEET.

- [illegible]

- #### E. CONDITIONS APPLICABLE TO OTHER INSTRUCTORS

- COMPLIANCE WITH MINORANCE. DEVELOPMENT WITHIN BOTH DISTRICTS SHALL COMPLY WITH ALL CITY OF CHANDLER ZONING ORDINANCE REQUIREMENTS DEALING WITH OFF-STREET PARKING, SIGNAGE, SCREENING, ETC.
- ACCESS. VEHICULAR ACCESS TO ALL PARCELS SHALL ONLY BE VIA INTERNAL DRIVEWAY CUTOFFS OF THE MAJOR DEDICATED ROADWAYS CREATED AS A PART OF THE DEVELOPMENT OF GENERAL COMMERCE CORridor.
- BUFFER AREA. IN THE EVENT ANY PORTION OF THE BUFFER AREA IS CLEARED TO PROVIDE FOR UTILITY CONDUITS AND/OR ALLOWED THE NEIGHBORHOOD, THE CLEARED AREA SHALL BE REPLANTED WITH NATURAL, SHRUBS AND TREES TO PROVIDE FOR SCREENING TO ADJOINING PROPERTIES.

4. **SHRIMP** SIGNS WITHIN THE DISTRICT SHALL NOT PROJECT ABOVE THE ROOF LINE OF A BUILDING, NOR SHALL THEY BE OF A FLASHING OR POINING CHARACTER.
5. **UNDERGROUND UTILITIES**: ALL UTILITY SERVICES INCLUDING TELEPHONE AND ELECTRIC SERVICE NOT LOCATED WITHIN A BUILDING ON ANY LOT SHALL BE UNDERGROUND.

6. FIRE PROTECTION: FIRE HYDRANTS SHALL BE INSTALLED SO THAT FIRE TRUCKS DO NOT HAVE TO TRAVEL MORE THAN 500 FEET TO THE NEAREST REMOTE AND ACCESSIBLE POINTS OF ALL BUILDINGS.
9. GENERAL NOTES

1. THE ILLUSTRATIVE MASTER PLAN IS ILLUSTRATIVE IN NATURE AND DEPICTS A GENERAL LAYOUT BASED ON CRITERIA ESTABLISHED BY THE CONDITIONAL MASTER PLAN.

2. THIS PLAN DEPICTS A COMBINATION OF EXISTING AND PROPOSED VEGETATION DEPENDING ON ULTIMATE CONDITIONS AT THE TIME OF CONSTRUCTION.



GOVERNMENT  
EXHIBIT  
2021-078  
#9

# CONDITIONAL REZONING PETITION 1990-073

**GCC PARTNERS**  
320 SOUTH TRYON STREET  
SUITE 202  
CHARLOTTE, NC 28202

**GENERAL  
COMMERCE  
CENTER**  
Charlotte, North Carolina

ILLUSTRATIVE  
MASTER PLAN

- Subject Property

7-11-90

8-27-90 PUBLIC HEARING DOCUMENT

• *Revised*

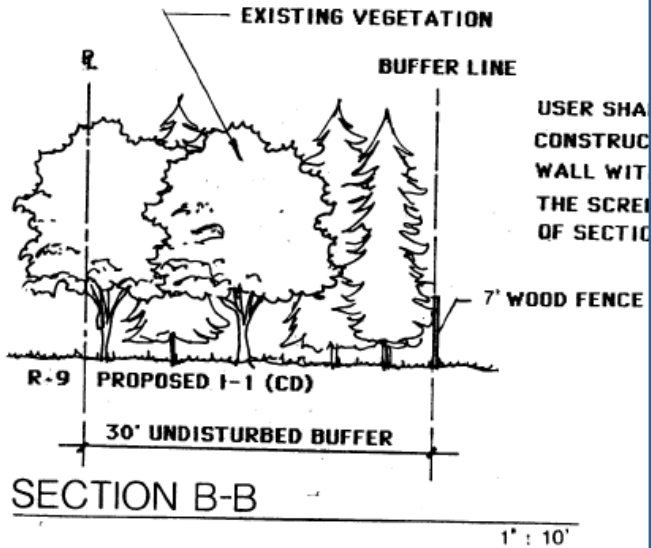
0 50 100 200 



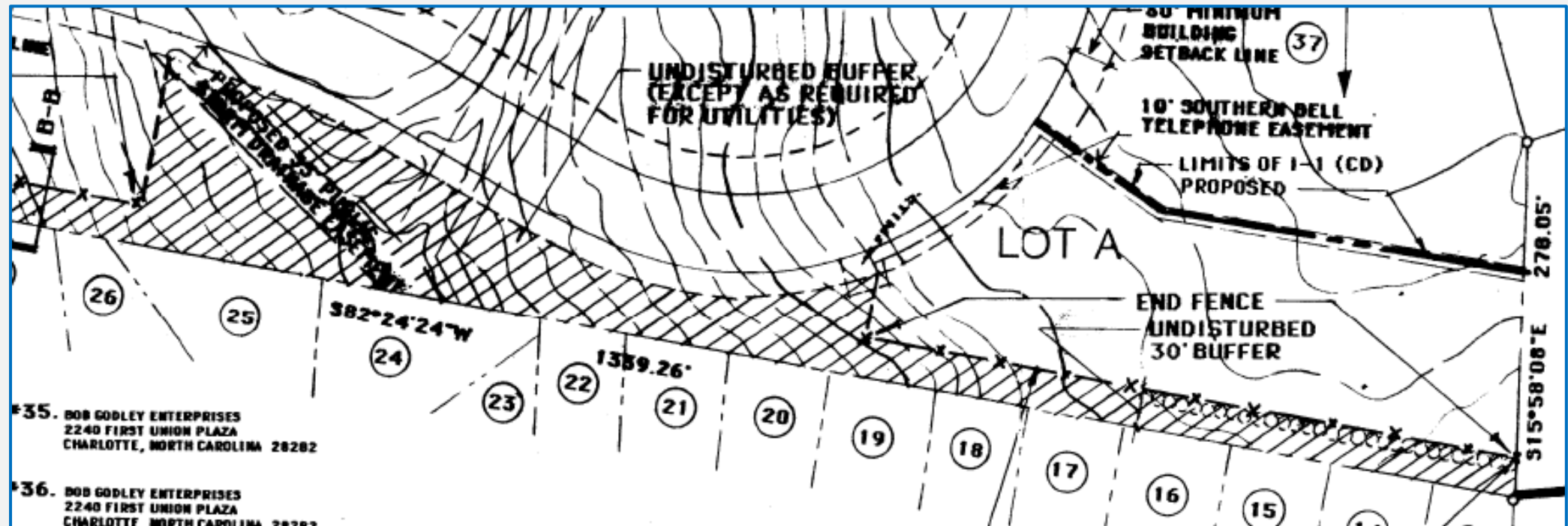
## VALID GOVERNMENTAL APPROVAL

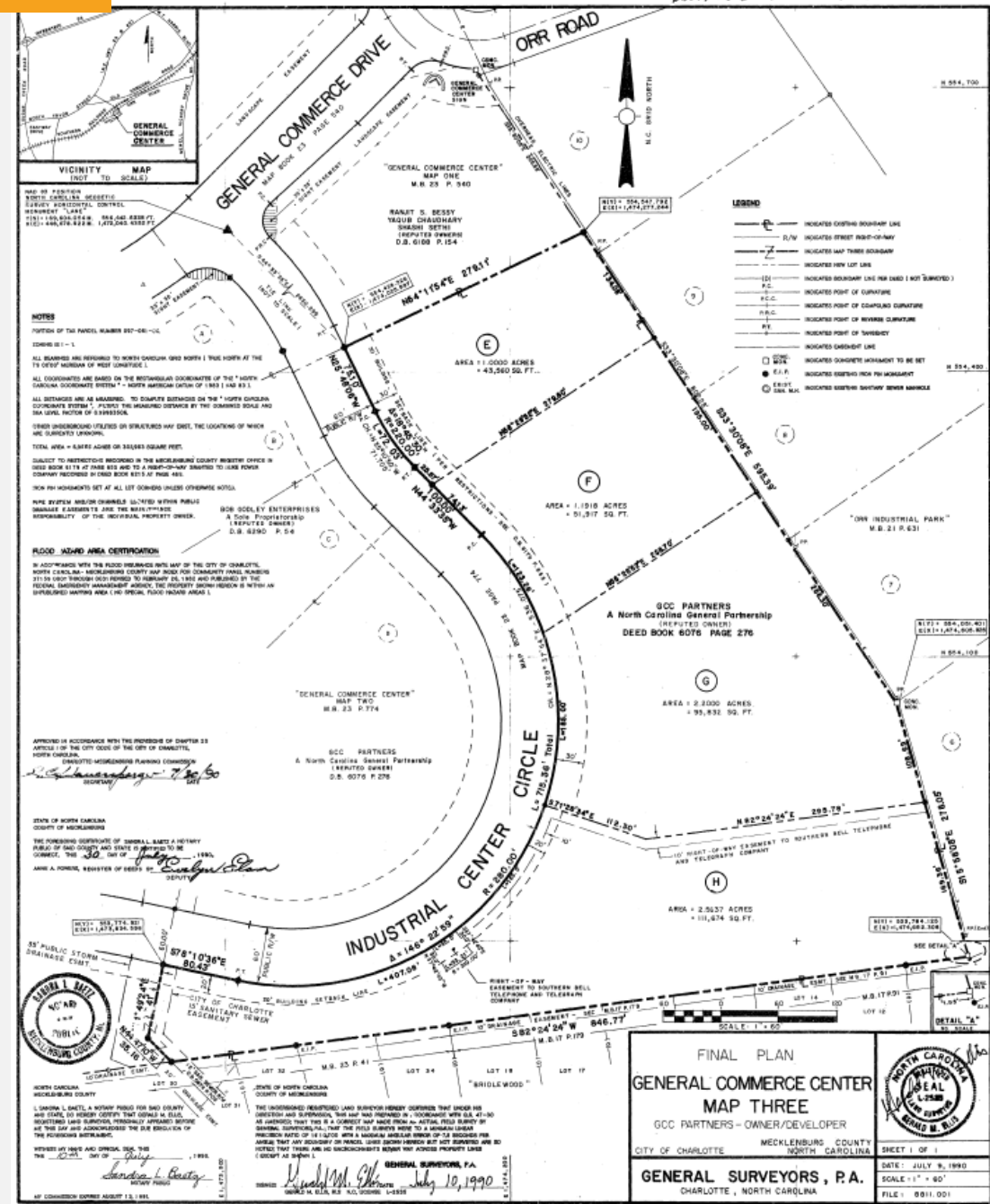
GOVERNMENT  
EXHIBIT  
2021-078  
#10

SPECIFIC  
CONDITIONAL  
BUFFER PROVISIONS



**4. SETBACKS, UNDISTURBED BUFFER AND SCREENING. THE DEVELOPMENT SHALL OBSERVE (1) SETBACKS FROM ANY PUBLIC STREET AND FROM ANY ADJACENT INDUSTRIAL PROPERTY OF AT LEAST 20 FEET, AND (2) REAR BUFFER AREAS WHERE AND AS INDICATED ON THE SITE PLAN. ALL BUFFER AREAS SHALL REMAIN UNDISTURBED EXCEPT (1) IN THOSE INSTANCES WHERE UTILITY CONNECTIONS NECESSARY TO SERVE THE SITE ARE NEEDED, AND (2) THE SOUTHERN BELL TELEPHONE EASEMENT SHOWN ON SITE PLAN. THESE BUFFER AREAS WILL HAVE NO STORAGE OF MATERIALS, NO PARKING, NO BUILDING, NO MANEUVERING AND NO GRADING EXCEPT AS ALLOWED HEREINAFOVE. BUFFER AREAS AROUND THE PERIMETER OF THE SITE SHALL BE CLEARLY STAKED OR OTHERWISE DESIGNATED TO REMAIN UNDISTURBED. A SIX FOOT WOODEN FENCE SHALL BE PROVIDED AS SCREENING BETWEEN DEVELOPMENT IN THE DISTRICT AND ADJACENT RESIDENTIAL PROPERTIES AS INDICATED ON THE SITE PLAN. SUCH SCREENING SHALL BE LOCATED ON THE INTERIOR BORDER OF THE BUFFER AREA.**





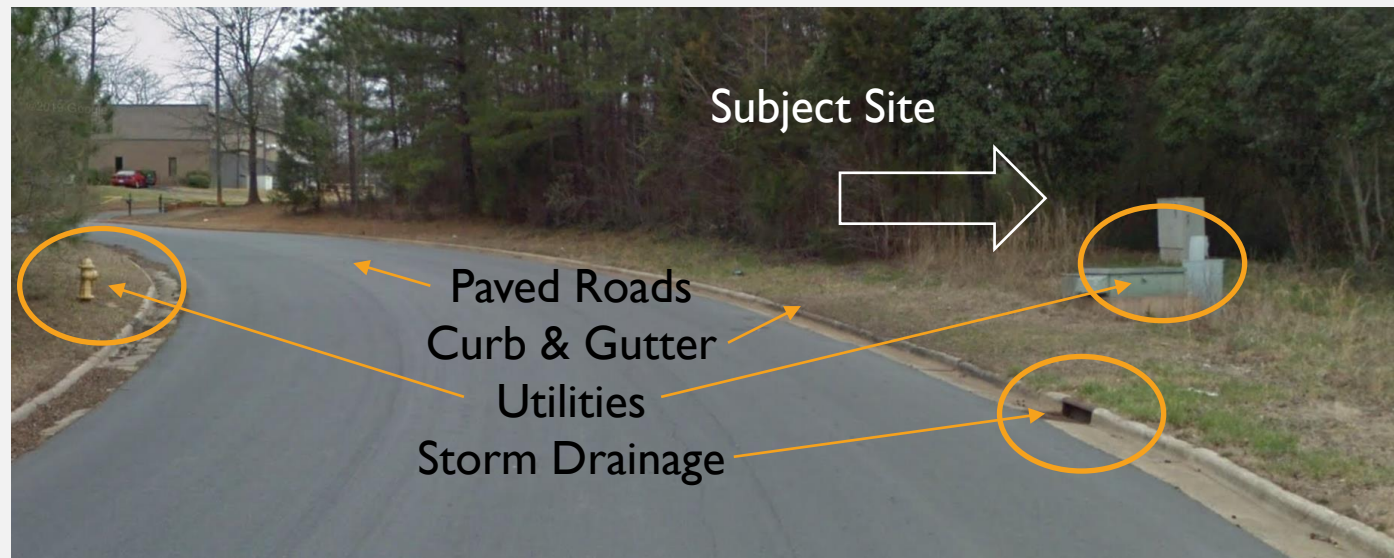
## REASONABLE RELIANCE / SUBSTANTIAL EXPENDITURES

GOVERNMENT  
EXHIBIT  
2021-078  
#12

INFRASTRUCTURE  
EXPENDITURES

Infrastructure Expenditures  
After & Dependent Upon  
Governmental Approvals

- Roads Constructed
- Utilities Installed



## GOOD FAITH

The majority of the properties within the General Commerce Center industrial park have been developed in good faith and reliant upon governmental approvals.

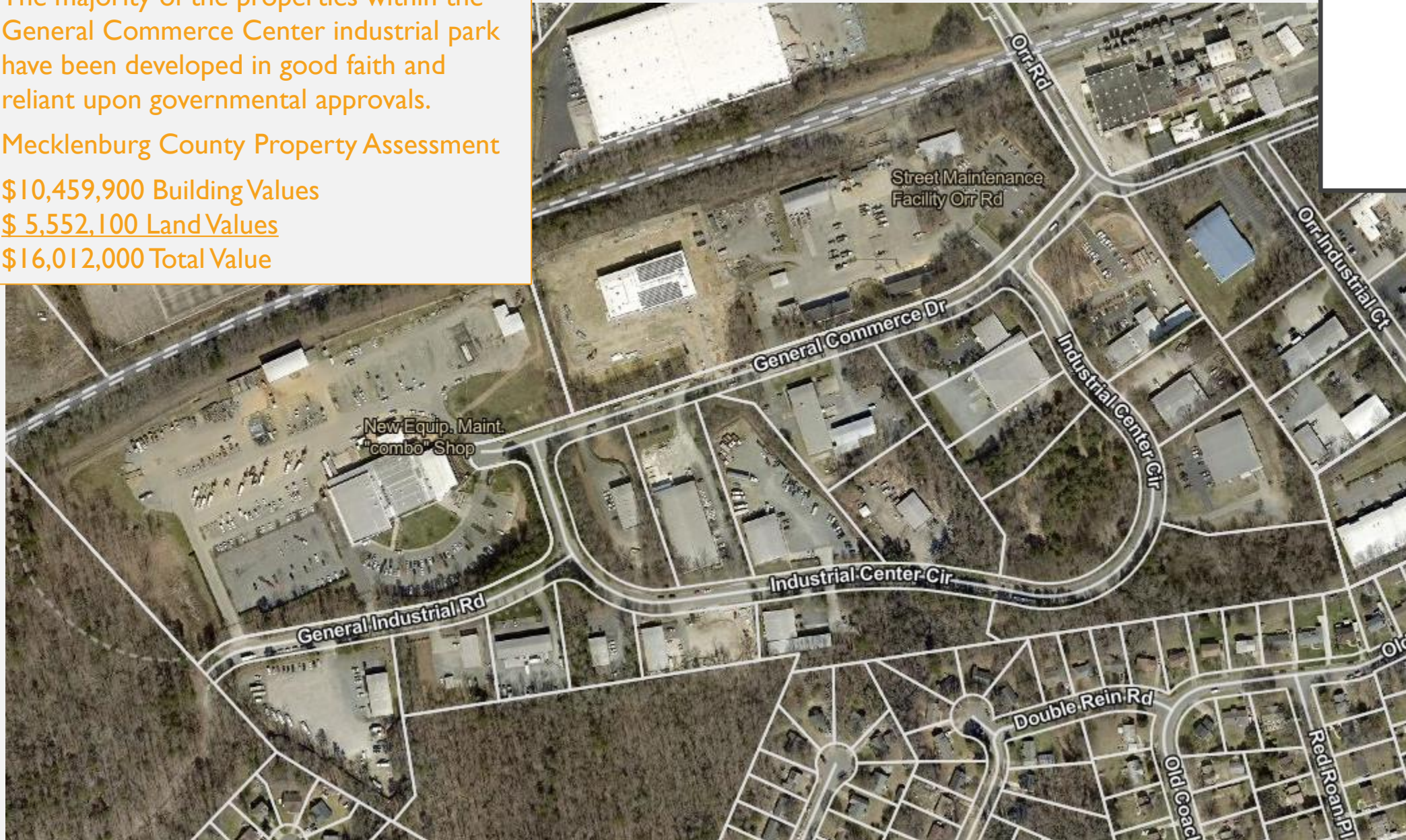
Mecklenburg County Property Assessment

\$10,459,900 Building Values

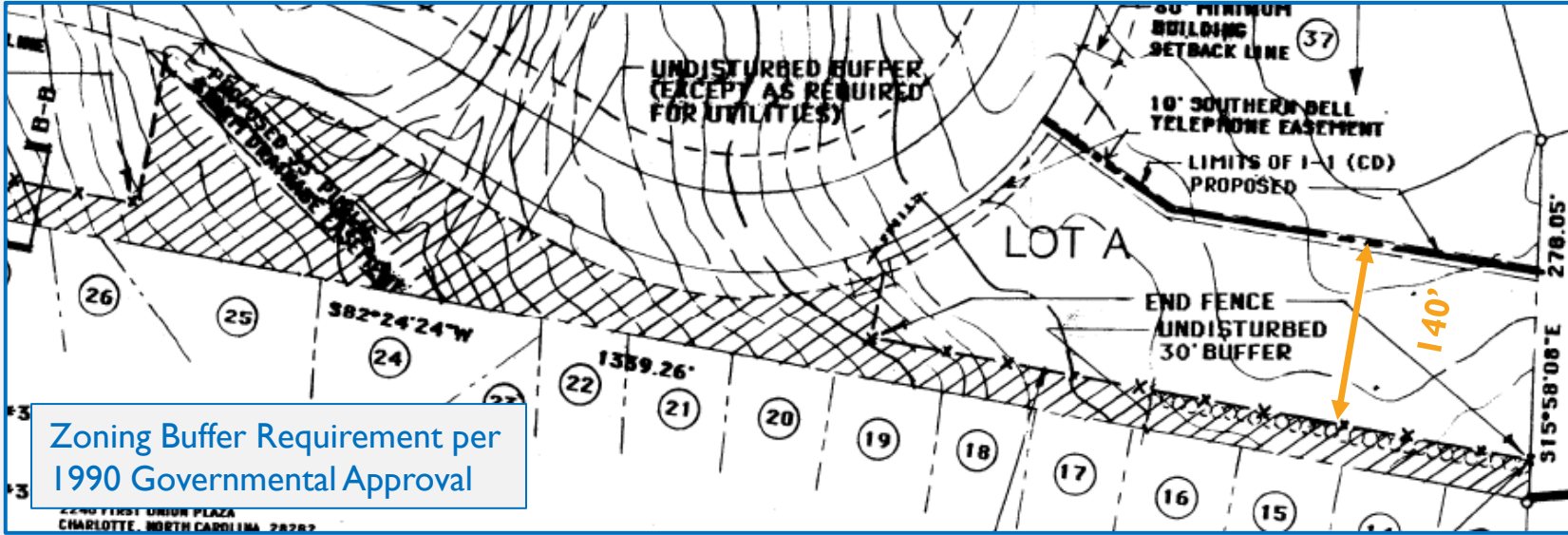
\$ 5,552,100 Land Values

\$16,012,000 Total Value

GOVERNMENT  
EXHIBIT  
2021-078  
#13



## EXPERIENCE DETRIMENT

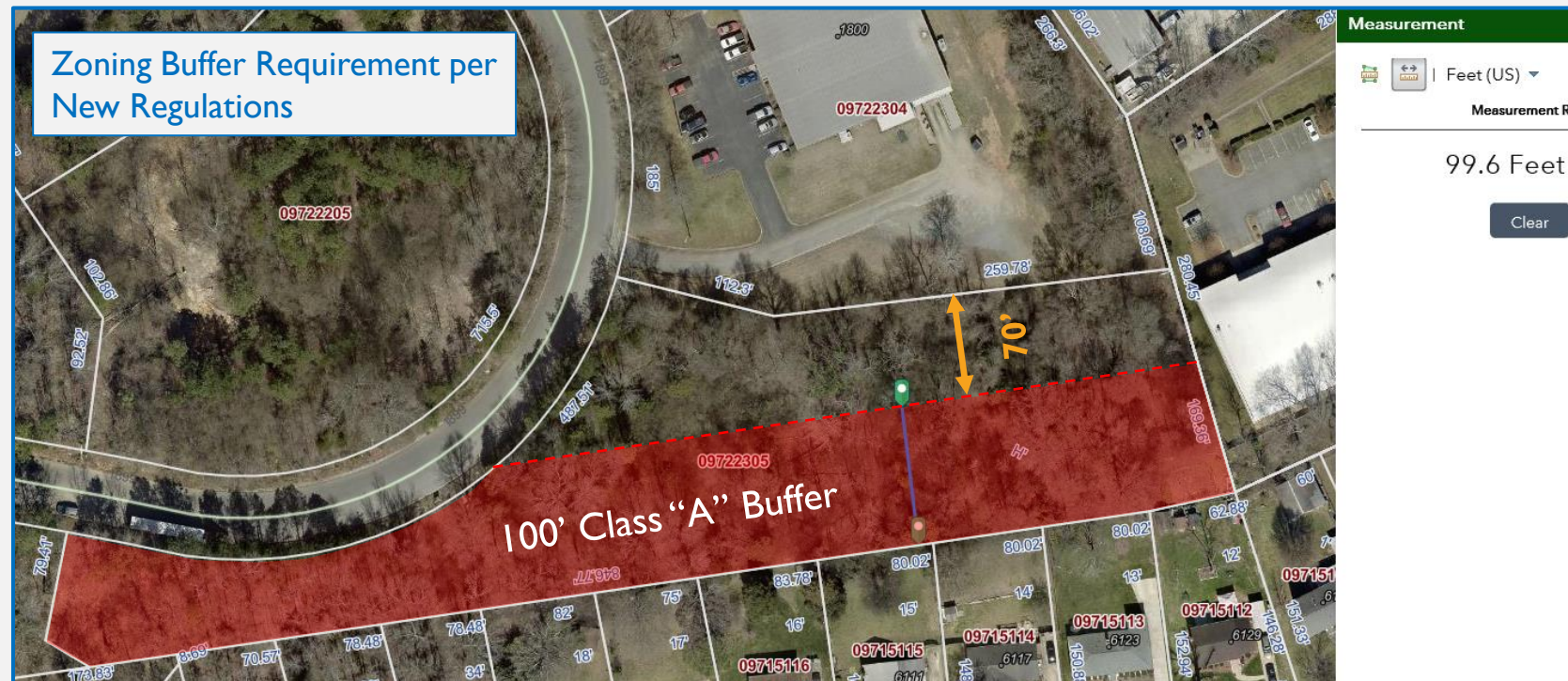


GOVERNMENT  
EXHIBIT  
2021-078  
#14

BUFFER  
COMPARISON

The property owner will experience detriment if required to comply with the new zoning buffer regulations.

The developable width of the subject property is reduced from approximately 140' to 70' if to comply with the new regulations.



## Common Law Vested Rights – Factors for Determination

Valid governmental approval. An owner must obtain an affirmative governmental action concerning the property or project. This could be a conditional use permit, a subdivision plat approval, a building permit, or some other site-specific affirmative action by the local government.

The General Commerce Center development (including the subject property) received conditional rezoning approval and subdivision plat approval in 1990.

Reasonable reliance. The expenditure must be in reasonable reliance on the valid governmental approval. In other words, the expenditure must be after the permit approval and dependent on the permit approval.

Infrastructure improvements have been made to the subject planned development in reliance on valid governmental approvals and in compliance with the various regulations in place at the time of governmental approval.

Substantial expenditure. The owner must make some substantial expenditure—of time, effort, or money—in reliance on the valid governmental approval. The expenditure must be substantial in relation to the overall project.

Substantial expenditures have been made in reliance on governmental approvals to construct public streets (grading, pavement, and curb & gutter) and install utilities (water, sewer, underground electrical, storm drainage, and etc.) within the planned development in which the subject property is located.

Good faith. The owner must act in good faith to obtain a vested right. This means that the owner sought the governmental approval in the normal course of business and made expenditures to reasonably pursue the development.

The majority of the properties within the General Commerce Center industrial park have been developed in good faith and reliant upon governmental approvals. Only two of the 19 lots within planned development remain vacant. One of the two remaining vacant lots is the subject property. Mecklenburg County has assessed the land and building values within the planned development at \$16,012,000.

Experience Detriment. The owner must show that he will suffer harm if required to comply with new rules.

The property owner will experience detriment if required to comply with the new zoning buffer regulations. The developable width of the subject property is reduced from approximately 140' to 70' if to comply with the new regulations.

GOVERNMENT  
EXHIBIT  
2021-078  
#15

DETERMINATION  
FACTORS

**Section 5.109. Standards for Granting an Appeal.**

- 1) The Board of Adjustment shall reverse or modify the specific order, requirement, decision, or determination under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, requirement, decision, or determination.
- 2) In affirming, reversing, or modifying the order, requirement, decision, or determination, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

APPLICANT'S PRESENTATION:  
IN FAVOR OF OVERTURNING THE ZONING  
ADMINISTRATOR'S DETERMINATION

Appeal 2021-078



STATE OF NORTH CAROLINA  
RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

Instructions to Property Owners

- The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish buyers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
- You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (✓) in the appropriate box. In responding to the questions, you are only obligated to disclose information about which you have actual knowledge.
  - If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
  - If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
  - If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the property, even if you have actual knowledge of them or should have known of them.
  - If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the buyer a corrected Disclosure Statement or correct the problem.
- If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the buyers; and the broker must disclose any material facts about your property which he or she knows or reasonably should know, regardless of your responses on the Disclosure Statement.
- You must give the completed Disclosure Statement to the buyer no later than the time the buyer makes an offer to purchase your property. If you do not, the buyer can, under certain conditions, cancel any resulting contract (See "Note to Buyers" below). You should give the buyer a copy of the Disclosure Statement containing your signature and keep a copy signed by the buyer for your records.

**Note to Buyer:** If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the buyer. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

- In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: \_\_\_\_\_  
Owner's Name(s): \_\_\_\_\_

Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Buyers acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owners or owners' agents; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owners and not the owners' agents or subagents. Buyers are strongly encouraged to obtain their own inspections from a licensed home inspector or other professional. As used herein, words in the plural include the singular, as appropriate.

Buyer Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Buyer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Case # 2021-078

Property Address/Description: \_\_\_\_\_

The following questions address the characteristics and condition of the property identified above about which the owner has **actual knowledge**. Where the question refers to "dwelling," it is intended to refer to the dwelling unit, or units if more than one, to be conveyed with the property. The term "dwelling unit" refers to any structure intended for human habitation.

- |  | Yes                      | No                       | No Representation        |
|--|--------------------------|--------------------------|--------------------------|
| 1. In what year was the dwelling constructed? _____<br>Explain if necessary: _____   |                          |                          | <input type="checkbox"/> |
| 2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them? _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The dwelling's exterior walls are made of what type of material? <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Wood <input type="checkbox"/> Stone <input type="checkbox"/> Vinyl<br><input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Concrete <input type="checkbox"/> Fiber Cement <input type="checkbox"/> Aluminum <input type="checkbox"/> Asbestos<br><input type="checkbox"/> Other _____ (Check all that apply)   |                          |                          | <input type="checkbox"/> |
| 4. In what year was the dwelling's roof covering installed? _____ (Approximate if no records are available) Explain if necessary: _____  |                          |                          | <input type="checkbox"/> |
| 5. Is there any leakage or other problem with the dwelling's roof? _____   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab? _____   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)? _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)? _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning? _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. What is the dwelling's heat source? <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other _____<br>(Check all that apply) Age of system: _____   |                          |                          | <input type="checkbox"/> |
| 11. What is the dwelling's cooling source? <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other _____<br>(Check all that apply) Age of system: _____  |                          |                          | <input type="checkbox"/> |
| 12. What are the dwelling's fuel sources? <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other _____<br>(Check all that apply)<br>If the fuel source is stored in a tank, identify whether the tank is <input type="checkbox"/> above ground or <input type="checkbox"/> below ground, and whether the tank is <input type="checkbox"/> leased by seller or <input type="checkbox"/> owned by seller. (Check all that apply) _____ |                          |                          | <input type="checkbox"/> |
| 13. What is the dwelling's water supply source? <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Shared Well <input type="checkbox"/> Other _____<br>(Check all that apply) _____   |                          |                          | <input type="checkbox"/> |
| 14. The dwelling's water pipes are made of what type of material? <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Polybutylene <input type="checkbox"/> Other _____ (Check all that apply) _____   |                          |                          | <input type="checkbox"/> |
| 15. Is there any problem, malfunction or defect with the dwelling's water supply (including water quality, quantity, or water pressure)? _____   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. What is the dwelling's sewage disposal system? <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System <input type="checkbox"/> City/County System available <input type="checkbox"/> Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) <input type="checkbox"/> Other _____ (Check all that apply) _____                          |                          |                          | <input type="checkbox"/> |
| 17. If the dwelling is serviced by a septic system, do you know how many bedrooms are allowed by the septic system permit?<br>If your answer is "yes," how many bedrooms are allowed? _____ <input type="checkbox"/> No records available  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic system? _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Is there any problem, malfunction or defect with the dwelling's central vacuum, pool, hot tub, spa, attic fan, exhaust fan, ceiling fans, sump pump, irrigation system, TV cable wiring or satellite dish, garage door openers, gas logs, or other systems? _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Is there any problem, malfunction or defect with any appliances that may be included in the conveyance (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)? _____   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

2021-078

- |   | Yes                      | No                       | No Representation        |
|---|--------------------------|--------------------------|--------------------------|
| 21. Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired?.....  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property? .....   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property?.....  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. Is the property to be conveyed in violation of any local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)? .....   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 25. Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) located on or which otherwise affect the property? ..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. Is there any noise, odor, smoke, etc. from commercial, industrial, or military sources which affects the property? .....  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?.....  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. Is the property the subject of any lawsuits, foreclosures, bankruptcies, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmen's liens, or notices from any governmental agency that could affect title to the property?.....  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 29. Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area? .....   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. Does the property abut or adjoin any private road(s) or street(s)?.....   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street?.....   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

If you answered "yes" to any of the questions listed above (1-31) please explain (attach additional sheets if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling unit(s), sheds, detached garages, or other buildings located thereon.

- |  | Yes                      | No                       | No Representation        |
|--|--------------------------|--------------------------|--------------------------|
| 32. Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

If you answered "yes" to the question above, please explain (attach additional sheets if necessary):

- |   | Yes                      | No                       | No Representation        |
|---|--------------------------|--------------------------|--------------------------|
| 33. Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments? If your answer is "yes", please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

• (specify name) \_\_\_\_\_ whose regular assessments ("dues") are \$ \_\_\_\_\_ per \_\_\_\_\_. The name, address, and telephone number of the president of the owners' association or the association manager are \_\_\_\_\_

• (specify name) \_\_\_\_\_ whose regular assessments ("dues") are \$ \_\_\_\_\_ per \_\_\_\_\_. The name, address, and telephone number of the president of the owners' association or the association manager are \_\_\_\_\_

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_  
 Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

2021-078

\*If you answered "Yes" to question 33 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 33 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.

- |  | Yes                      | No                       | No Representation        |
|--|--------------------------|--------------------------|--------------------------|
| 34. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees: _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. As of the date this Disclosure Statement is signed, are there any dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees, or special assessments to which the property is subject: _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against, or pending lawsuits involving the property or lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit, and the amount of each unsatisfied judgment: _____  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 37. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against, or pending lawsuits involving the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit, and the amount of each unsatisfied judgment: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply).   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

	Yes	No	No Representation
Management Fees.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Master Insurance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance (specify amenities covered) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pest Treatment/Extermination.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm water Management/Drainage/Ponds.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_  
 Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

Colonial 2020-07B

\* Condition of Roof: Good

Provide Year of building updates:

\* Wiring: 2011

\* Plumbing: 2011

\* Heating: 2015

\* Roofing: 2016

Coverage Information:

\* Dwelling Coverage Limit: \$220,000

\* Valuation Type: RC

\* Fire Department Fire Alarm: ☐ Yes ☒ No

\* Central Station Fire Alarm: ☐ Yes ☒ No

\* Central Station Burglar Alarm: ☐ Yes ☒ No

\* Automatic Sprinklers(attics,bathrooms, closets, attached structures): ☐ Yes ☒ No

\* Automatic Sprinklers except (attic,bathrooms, closets, attached structure): ☐ Yes ☒ No

\* Fire Extinguishers: ☒ Yes ☐ No

\* Dead Bolt Locks: ☒ Yes ☐ No

\* Smoke Detectors: ☒ Yes ☐ No

No 1. Has there been a lapse in coverage?

No 2. Does the applicant (or tenant, if tenant occupied) own, keep, or shelter any of the following breeds: Akitas, Anatolian Shepherds, Chows, Dobermans, Pit Bulls, Presa Canario, Rottweilers, Wolf or Wolf Hybrids, or any mix of these breeds with any other breed whether listed or not?

No 3. Does the premises have a swimming pool or spa that does not have a four foot fence with a self latching gate, motorized pool cover, or other comparable safety device that is securely fastened to the perimeter of the pool/spa thus rendering it inaccessible?

No 4. Are there multiple horses, livestock, or farm animals on the premises?

No 5. Is there a trampoline on the premises?

No 6. Is the dwelling located on 5 or more acres?

No 7. Is there a woodstove used as a secondary heat source?

Yes 8. Does the dwelling have handrails on all entrances that have 3 or more steps?

No 9. Is there an underground fuel tank on the premises?

Yes 10. Any other residence owned, occupied or rented?

No 11. Any coverage declined, cancelled or non-renewed during the last 3 years? (not applicable in mo)

No 12. Has applicant had a foreclosure, repossession, bankruptcy, judgement or lien during the past five years?

No 13. Does applicant own any recreational vehicles (snow mobiles, dune buggys, mini bikes, atvs, etc)? (list year, type, make, model)

No 14. Is house for sale?

No 15. Is property w/in 300 ft of a commercial or non-residential property? ✓

No 16. Was the structure originally built for other than a private residence and then converted?

17. Any lead paint hazard?

No 18. Are there any bike or skate board ramps on the insured premises?

No 19. Is there a business or office of any kind that involves clients coming onto the premises?

No 20. Is there any farming or breeding operations on the insured premises?

Location No.	Location Address	No. Of Family	Protection Class	Edit	Delete
1	310 RAYFORD AVE LEXINGTON,DAVIDSON,NC,27292	1	3		

Save Clear Location Data

Back

Add Another Location

Continue

7/20/2021

(96,391 unread) - i\_gateway@bellsouth.net - AT&amp;T Yahoo Mail

2021-078

Find messages, documents, photos or people

Compose

← Back → Archive → Move → Delete → Spam → X

Inbox

999+

Unread

Starred

Drafts

13

Sent

Archive

Spam

Trash

^ Less

Views

Hide

Photos

Documents

Subscriptions

Groceries

Deals

Receipts

Travel

Folders

Show

I believe you have already reached out to Lisa McCarter in my office regarding this matter and she has provided you a list of possible times for us to meet next week.

In addition to the typical statutory vested rights which assigns validity periods for a particular development approvals, North Carolina courts have long recognized common law vested rights. In order to establish common law vested rights substantial expenditures must have been made relying in good faith on a valid governmental permit and would experience detriment if required to comply with a new regulation. Common law vested rights are valid for a reasonable time.

The subject property is one parcel in a larger development of approximately 21 lots that received governmental approvals in the early 1990's. Work on the development "substantially commenced" during that time and substantial infrastructure expenditures were made to develop the commercial development/subdivision. Roads and sidewalks were constructed and utilities installed. Individual parcels within the project have continued to develop throughout the past several years. This is one of two remaining vacant properties in the larger development. Imposing the buffer provisions in current Ordinance rather than the Ordinance in place at the time development received governmental approvals would create a detriment to the subject property. These factors are the reason for my previous interpretation and are consistent with North Carolina case law.

The job of Zoning Administration staff is to interpret and enforce the Zoning Ordinance and also comply with State statutes and case law. I would encourage you to consult with an attorney who has experience with land use law and/or do some additional research on case law in North Carolina regarding common law vested rights.

Please let us know if you have any questions.

Thanks,

**Shad Spencer | Zoning Administrator**  
Charlotte Planning, Design & Development

9/27/21, 12:12 AM

(100,650 unread) - i\_gateway@bellsouth.net - AT&amp;T Yahoo Mail

2021-078

Find messages, documents, photos or people

Compose

← Back → Archive → Move → Delete → Spam → X

1700 Industrial Center Circle - Compromise Discussions

Yahoo/Inbox



**David Murray** <davidmurray@mecklaw.com>  
Tel: joseph@gatewoodfinancial.com,  
fshep@belforno.com

Wed, Sep 22 at 1:12 PM

Mr. Gatewood, I represent the owner of 1700 Industrial Center Circle, Frank Shephardson (copied), on the appeal that you have filed to be heard this coming Tuesday. I have reviewed Mr. Spencer's interpretation and your appeal and believe that Mr. Spencer is on solid ground to be affirmed by the Zoning Board of Adjustment. I am emailing to see if you have any demands or proposals that you would consider in order to resolve this appeal before the hearing.

It is my understanding that if we were to lose the appeal, which I believe is unlikely, that the City would then require a 41.25' buffer to be installed instead of the 30' undisturbed buffer on the adopted conditional plans. This new buffer would result in the clearing of all trees and buffer up to your property line, the installation of a berm and the replanting of new trees which would take years to fill in. It would also likely result in a reconfiguration of the proposed building on the site such that cars would have to be parked toward your property as opposed to being blocked by the building under the current proposal.

In exchange for you withdrawing your appeal, my client is willing to either plant screening trees along your property line to provide further buffer for you along with the undisturbed 30' buffer or to consider a cost estimate from you to compensate you to install your own screening trees along your property line. If you have another proposal, please send it to me for our consideration.

If you would like to speak with either me or Frank, please let me know. Otherwise, we look forward to your response.

Thank you,

David W. Murray



Owner	Washburn 3100 Inc	Tax Billing Zip	28211
Tax Billing Address	230 Wonderwood Dr	Tax Billing Zip+4	4012
Tax Billing City & State	Charlotte, NC		

School District	Charlotte-Mecklenburg Schools	Zoning	HCD
Subdivision	General Commerce Center Map 03	Zoning Description	Industrial Light Indust C2-Hcd
Township	Charlotte	Neighborhood Code	Industrial - Northeast Submark-In0
Census Tract	56.05		

Parcel ID	<u>097-223-05</u>	Tax Area	08
Lot #	H		
Legal Description	LH M23-888		

Assessment Year	2020	2019	2018
Assessed Value - Total	\$218,900	\$218,900	\$223,000
Assessed Value - Land	\$218,900	\$218,900	\$223,000
YOY Assessed Change (\$)	\$0	-\$4,100	
YOY Assessed Change (%)	0%	-1.84%	
Market Value - Total	\$218,900	\$218,900	\$223,000
Market Value - Land	\$218,900	\$218,900	\$223,000
Tax Year	Total Tax	Change (\$)	Change (%)
2018	\$2,928		
2019	\$2,112	-\$813	-27.8%
2020	\$2,112	\$0	0%

Land Use - Universal	Industrial (NEC)	Lot Acres	2.56
Land Use - County	Industrial	Lot Sq Ft	111,514

Value As Of	09/12/2021
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MLS Listing #	3307647	MLS Current List Price	\$330,000
MLS Status	Withdrawn	MLS Orig. List Price	\$398,000
MLS Status Change Date	12/18/2017	Listing Agent Name	60274-Stephanie Gossett
MLS Listing Date	08/03/2017	Listing Broker Name	ALLEN TATE LAKE NORMAN

MLS Listing #	585536
MLS Status	Expired
MLS Listing Date	04/06/2006
MLS Listing Price	\$135,500
MLS Orig Listing Price	\$135,500
MLS Expiration Date	10/06/2006

Sale Date	04/08/2021	Seller	99722905 Indl Land Trust
Recording Date	04/15/2021	Deed/Page	35944-454
Sale Price	\$255,000	Deed Type	Special Warranty Deed
Owner	Washburn 3100 Inc		

MORTGAGE HISTORY		
Mortgage Date	05/05/2008	08/20/2004
Mortgage Amount	\$249,600	\$63,840
Mortgage Lender		Private Individual
Mortgage Type	Refi	Seller/Carry Back

The left map shows a property with the following dimensions: 80', 156', 138', 191', 117', 288', 167', and 863'. The property is located near Industrial Center Cir, Double Rein Rd, Old Coach Rd, and Redstone Dr. A scale bar indicates 100 yards. The right map shows a different property with a black arrow pointing to a specific location. The property is located near General Commerce Dr, Old Coach Rd, and Industrial Center Cir. A scale bar indicates 200 yards. Both maps include a copyright notice for 2021.



Case # 2021-078

Any building permits that are issued and not in compliance with the current buffer requirements will be contested.

Sincerely,

2021-078

Joseph K. Gatewood

Insurance and Real Estate

8301 University Executive Park Dr Ste 104

Charlotte, NC 28262

joseph@gatewoodfinancial.com

Phone: 704-548-9001

Cell: 704-534-0726

Fax: 704-548-0200

You're Safe In The Gate!!!

On Monday, June 14, 2021, 06:24:52 PM EDT, Marshall, John <john.c.marshall@charlottenc.gov> wrote:

Zoning runs with the land. Until City Council takes action to change or revoke the current conditional zoning, the Zoning Code standards in effect at the time of the re-zoning and the standards listed on the conditional plan govern the development of the site. There is no automatic reversion of the zoning based on the passage of time. If there is no development within the specified time, City Council has the authority to change the Zoning. Staff does not have that authority and are precluded from applying the current Zoning Code standards to the development of the property without the owner's approval.

From: Robertson, Kelly <Kelly.Robertson@charlottenc.gov>  
Sent: Monday, June 14, 2021 2:57 PM  
To: Gatewood <joseph@gatewoodfinancial.com>  
Cc: Marshall, John <John.C.Marshall@charlottenc.gov>  
Subject: RE: [EXT]Re: [EXT]Re: Development on Industrial Center Circle

[View the 2019 North Carolina General Statutes](#) | [View Previous Versions of the North Carolina General Statutes](#)

## 2013 North Carolina General Statutes

### Chapter 160A - Cities and Towns.

### Article 19 - Planning and Regulation of Development.

### Section 160A-385.1 - 1. Vested rights.

**Universal Citation:** NC Gen Stat § 160A-385.1 (2013)

#### 160A-385.1. Vested rights.

(a) The General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that city approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

The ability of a landowner to obtain a vested right after city approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(b) Definitions.

Case # 2021-078

(1) "Landowner" means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

(2) "City" shall have the same meaning as set forth in G.S. 160A-1(2).

(3) "Phased development plan" means a plan which has been submitted to a city by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the city to be a site specific development plan.

(4) "Property" means all real property subject to zoning regulations and restrictions and zone boundaries by a city.

(5) "Site specific development plan" means a plan which has been submitted to a city by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a city. Unless otherwise expressly provided by the city, such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the city pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the city shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan.

Case # 2021-078

(6) "Vested right" means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

(c) Establishment of vested right.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the city with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A city may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A city shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phase development plan shall be deemed approved upon the effective date of the city's action or ordinance relating thereto.

(d) Duration and termination of vested right.

(1) A right which has been vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the city.

(2) Notwithstanding the provisions of subsection (d)(1), a city may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the city.

(3) Notwithstanding the provisions of (d)(1) and (d)(2), the city may provide by ordinance that approval by a city of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The city still may require the landowner to submit a site specific development plan for approval by the city with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications. Nothing in this section shall be construed to require a city to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.

Case# 2021-078

(4) Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the city to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the city from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

(5) Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

(6) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(e) Subsequent changes prohibited; exceptions.

(1) A vested right, once established as provided for in this section, precludes any zoning action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

a. With the written consent of the affected landowner;

b. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan;

c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

d. Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the city of the site specific development plan or the phased development plan; or

e. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the city may modify the affected provisions,

Case# 2021-078

upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(2) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by a city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.

(3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of a city to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.

(f) Miscellaneous provisions.

(1) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.

(2) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(3) In the event a city fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice.

(1989 (Reg. Sess., 1990), c. 996, s. 2.)

**Disclaimer:** These codes may not be the most recent version. North Carolina may have more current or accurate information. We make no warranties or guarantees about the accuracy, completeness, or adequacy of the information contained on this site or the information linked to on the state site. Please check official sources.

## Summary of Permit Choice and Vested Rights Applicability

Type of Permit/Rights	Period of Validity	Summary of Applicability
Permit Choice	18 months from initial approval	Right for development applicant to choose for application to be reviewed under the regulations applicable at the time of initial application; applies to initial permit application and subsequent related development permits. G.S. 143-755 & 160D-108.
Building Permits	6 months	Work under a building permit must begin within six months. Permit expires after discontinuance of work for 12 months. G.S. 160D-1111.
Development Permits	12 months	General rule that development approvals (site plans, plats, special use permits, and more) are valid for twelve months unless altered by other statutes. Local regulations may extend the period of validity. G.S. 160D-108.
Site-Specific Vesting Plan	2 years (up to 5)	Certain approvals identified by local ordinance create extended vesting. Permit must be identified as such at the time of approval. G.S. 160D-108.1.
Multi-Phased Development	7 years from first site plan approval	Qualifying development enjoys extended vesting. Must be at least 25 acres in size, subject to a master development plan with committed elements, to be permitted and built in phases. G.S. 160D-108.
Validity after Development Discontinuation	2 years	For a development that has substantially commenced work, statutory vested rights expire after 24 consecutive months of discontinuance of the project. The discontinuance period is tolled for any litigation relating to the project or property. (Building permits limited to 12 months of discontinuation.) G.S. 160D-108.
Development Agreement	Per agreement	Negotiated agreement between developer and local government specifying a range of development topics, including period of vesting. G.S. 160D-108 & -1007.
Common Law Vested Right	Reasonable time	Established by substantial expenditures relying in good faith on a valid governmental permit. Authorized in caselaw.

## Vested Rights

## Summary

A vested right is the right to continue a use or complete a project as it was approved, despite subsequent changes to the ordinance. Vested rights are founded on fairness and balancing interests—the public interest in uniform current rules and private interest in protecting good faith investments in property development. The general rule is that new regulations apply equally to all properties. There is no right that generally applicable rules will remain unchanged forever.<sup>1</sup> In some specific situations, however, vested rights protect those property owners who have relied on specific approvals from the local government.

In North Carolina, there are four paths for an owner to establish vested rights and each is discussed below:

- Common law vested right (reasonable time)
- Valid building permit (six months)
- Development agreement (up to twenty years)
- Site-specific development plan or a phased development plan (2-5 years)

Nonconforming structures and uses are a separate, but related topic. Nonconformities are the existing uses and structures that do not comply with new ordinance requirements. Local governments commonly allow nonconformities to remain, but not expand or intensify.

## Common Law Vested Rights

North Carolina courts have long recognized vested rights and have set forth a test for establishment of vested rights.<sup>2</sup> In order to show vested rights, the owner must: (i) obtain a valid governmental approval; (ii) reasonably rely upon the approval; (iii) make a substantial expenditure; (iv) act in good faith; (v) experience detriment to comply.

**Valid governmental approval.** An owner must obtain an affirmative governmental action concerning the property or project. This could be a conditional use permit, a subdivision plat approval, a building permit, or some other site-specific affirmative action by the local government. This is more than merely relying on the general zoning district or advisory zoning

<sup>1</sup> *McKinney v. City of High Point*, 239 N.C. 232, 237, 79 S.E.2d 730, 734 (1954) ("The adoption of a zoning ordinance does not confer upon citizens living in a Residence A Zone, as therein defined, any vested right to have the ordinance remain forever in force, inviolate and unchanged.")

<sup>2</sup> *Town of Hillsborough v. Smith*, 276 N.C. 48, 170 S.E.2d 904 (1969).

compliance letter.<sup>3</sup> If a permit was mistakenly issued, the permit is insufficient for establishing vested rights.<sup>4</sup>

*Reasonable reliance.* The expenditure must be in reasonable reliance on the valid governmental approval. In other words, the expenditure must be after the permit approval and dependent on the permit approval. Money spent in preparation for the application (prior to approval) does not count as an expenditure for the vested right.<sup>5</sup>

*Substantial expenditure.* The owner must make some substantial expenditure—of time, effort, or money—in reliance on the valid governmental approval. The expenditure must be substantial in relation to the overall project. Minor site work may be substantial for a small accessory building, but minor site work may not be substantial for a large-scale development.<sup>6</sup> Actual construction is not necessary. Expenditures on binding contracts, construction materials, or equipment may be sufficient.<sup>7</sup>

*Good faith.* The owner must act in good faith to obtain a vested right.<sup>8</sup> This means that the owner sought the governmental approval in the normal course of business and made expenditures to reasonably pursue the development. An owner would not be acting in good faith if the owner misled the local government or neighbors, rushed an application for a conditional use permit to beat a rule change, or hastily began site work for an appearance of substantial expenditure.<sup>9</sup>

<sup>3</sup> *Browning-Ferris Indus. Of S. Atl., Inc. v. Guilford Cnty. Bd. of Adjustment*, 126 N.C. App. 168, 484 S.E.2d 411, 412 (1997); *MLC Auto., LLC v. Town of S. Pines*, 207 N.C. App. 555, 702 S.E.2d 68 (2010).

<sup>4</sup> *Mecklenburg Cnty. v. Westberry*, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

<sup>5</sup> *Warner v. W & O, Inc.*, 263 N.C. 37, 41, 138 S.E.2d 782, 785-86 (1964) ("Expenditures made for architect's drawings, so that W & O might apply for a permit, were manifestly not made in reliance on the permit thereafter issued.")

<sup>6</sup> *Sunderhaus v. Bd. of Adjustment of Town of Biltmore Forest*, 94 N.C. App. 324, 327, 380 S.E.2d 132, 134 (1989) ("A significant amount of the labor needed to install the [satellite] dish was accomplished by the digging of the cable trench and by the laying of the PVC pipe. Therefore, the permissibility of this use of plaintiff's yard is determinable under the [former] regulations.")

<sup>7</sup> *Town of Hillsborough v. Smith*, 276 N.C. 48, 54-55, 170 S.E.2d 904, 909 (1969) ("It is not the giving of notice to the town, through a change in the appearance of the land, which creates the vested property right in the holder of the permit. The basis of his right to build and use his land, in accordance with the permit issued to him, is his change of his own position in bona fide reliance upon the permit."); See also, *Randolph County v. Coen*, 99 N.C. App. 746, 394 S.E.2d 256 (1990).

<sup>8</sup> See *Stowe v. Burke*, 255 N.C. 527, 122 S.E.2d 374 (1961); *Thomasville of N. Carolina Ltd. v. City of Thomasville*, 17 N.C. App. 483, 195 S.E.2d 79 (1973).

<sup>9</sup> See *Warner*, 263 N.C. at 43, 138 S.E.2d at 786-87.

*Experience Detriment.* The owner must show that he will suffer harm if required to comply with new rules. If the previously-approved project can comply with the new rules without any harm to the owner, then there is no basis for treating the owner differently.<sup>10</sup>

A vested right is a right to complete the project according to the approval. If building permits were granted for ancillary offices at a proposed quarry site, and then zoning was changed and quarries are no longer permitted at the site, the building permit may create a vested right in the office use, but not the quarry use unless the quarry itself was approved by permit.<sup>11</sup> Moreover, if project expenditures are phased over time, the expenditures may only create vested rights for the phase(s) for which expenditures have been made.<sup>12</sup>

No case states how long a common law vested right will last. Generally, it is safe to say that common law vested rights continue while the owner is pursuing the vested development and some reasonable time thereafter. If there is no activity or pursuit of development for an extended period of time, a vested right likely expires.

### Building Permit

As long as an owner has a valid building permit, the owner has a vested right to develop the property as set forth in the building permit.<sup>13</sup> Any change to the ordinance which conflicts with the building as permitted is not applicable. If the building permit expires or is revoked, the vested right expires as well. Typically a building permit is valid for six months from issuance. If the owner begins the project, a permit expires after 12 months of no activity.

### Development Agreements

A development agreement is a formal contract between the landowner and the local government concerning a development project and can create long-term vested rights in the zoning rules in effect at

<sup>10</sup> *Browning-Ferris Indus. Of S. Atl., Inc. v. Guilford Cnty. Bd. of Adjustment*, 126 N.C. App. 168, 172, 484 S.E.2d 411, 415 (1997) ("There is nothing in this record to show that BFI would be prejudiced or harmed if the amended Ordinance is held to apply to its efforts to construct and operate the transfer station. The mere requirement (in the amended Ordinance) that BFI acquire a special use permit prior to construction and operation of the transfer station is not itself supportive of an argument that BFI has been prejudiced by the amended Ordinance.")

<sup>11</sup> *Sandy Mush Properties, Inc. v. Rutherford Cnty. ex rel. Rutherford Cnty. Bd. of Comm'rs*, 181 N.C. App. 224, 638 S.E.2d 557 review allowed and remanded sub nom. *Sandy Mush Properties, Inc. v. Rutherford Cnty.*, 361 N.C. 569, 651 S.E.2d 566 (2007)

<sup>12</sup> *Appeal of Tadlock*, 261 N.C. 120, 134 S.E.2d 177 (1964); *Transland Properties, Inc. v. Bd. of Adjustment of Town of Nags Head*, 18 N.C. App. 712, 198 S.E.2d 1 (1973).

<sup>13</sup> G.S. § 160A-385 ("Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 [or G.S. 153A-357] prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 [or G.S. 153A-358] and unrevoked pursuant to G.S. 160A-422 [or G.S. 153A-362] . . . .")

the time of the agreement.<sup>14</sup> A development agreement sets forth the nature and phasing of the buildings, public improvements and investments, and private improvements and investments.

A development agreement is a useful but particular tool. Projects must be greater than 25 acres, plans must be reasonably detailed, and the planning and legal costs for the developer and local government can be substantial.

### Site Specific Development Plans and Phased Development Plans

The General Statutes recognize vested rights in relation to particular development approvals: site specific development plans and phased development plans (referred to in this discussion as “specific plans” and “phased plans”).<sup>15</sup> Approval of such plans gives the owner the “right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan.”

A specific plan is an application for a development approval submitted by the owner and approved by the city. As the name implies, the specific plan gives a fairly clear picture of the proposed development. It describes aspects like boundaries, natural features, intensity of uses, building size and location, and infrastructure. Each local government defines by ordinance what qualifies as a specific plan that creates vested rights. The statute identifies examples: planned unit development plan, preliminary or final subdivision plat, preliminary or general development plan, a conditional or special use permit, and conditional or special use district zoning plan.

A phased plan is like a specific plan but has less detail and certainty about the proposed project. The developer may come back with more details as the development progresses. For phased development plans—which have less detail than the site specific plans—a local government can set the ordinance so that the approved phased development plan creates vested rights in the zoning classification, but the owner must still seek approval of site specific development plans for each phase, approved in accordance with the vested zoning classification. Unlike specific plans, vested rights for phased plans are optional—some local governments may not recognize them.

There are certain procedural requirements and limitations for vested rights for specific plans and phased plans. A vested right is established upon valid approval of the plan, which is defined as the effective date of the city action or ordinance. In order for a specific plan or a phased plan to qualify for the vested right, the approval process must include notice to the public and a public hearing. A document that serves to create vested rights must be identified as such. These vested rights for specific plans and phased plans last at least 2 years from the approval. Rights may vest longer—up to five years—if desired by the local government based on relevant factors like the size of the development, market conditions, and level of investment. Vested rights terminate at the end of the vesting period for buildings and uses for which no valid building permits have been filed. Even with vested rights in

<sup>14</sup> G.S. § 160A-400.20 *et seq.*; § 153A-349.1 *et seq.*

<sup>15</sup> See, generally, G.S. § 160A-385.1.

approved plans, the owner must still comply with conditions of those plans. A city may revoke an approval (and thus vested rights) for failure to comply with the conditions of approval.

Vested rights for specific plans and phased plans are not absolute. They may be limited or revoked in the case of: a serious threat to public health, safety, and welfare; compensation to the owner for costs incurred after development approval; misrepresentation by the owner; enactment of state or federal law that prevents the development as approved. Additionally, general ordinances may still apply to a vested project. An overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use may still apply. Ordinances of general application—like plumbing or electric codes—may still apply. A local government may still adopt ordinances to address nonconforming situations.

### Conclusion

Vested rights attempt to balance public and private interests—the public interest in uniform current rules and the private interest in securing reasonable investment-backed expectations. Generally, new rules apply equally to all properties. Vested rights, however, protect those property owners who have relied on specific approvals from the local government. In North Carolina, there are four paths for an owner to obtain vested rights: common law vested rights, valid building permits, development agreements, and site-specific development plans and phased development plans. Each of these has specific requirements and terms of vesting.

OPPOSITION PRESENTATION:  
IN FAVOR OF UPHOLDING THE ZONING  
ADMINISTRATOR'S DETERMINATION  
(SUBMITTED BY DAVID MURRAY, THE ODOM  
FIRM PLLC, FOR THE PROPERTY OWNER  
FRANK SHEPARDSON)

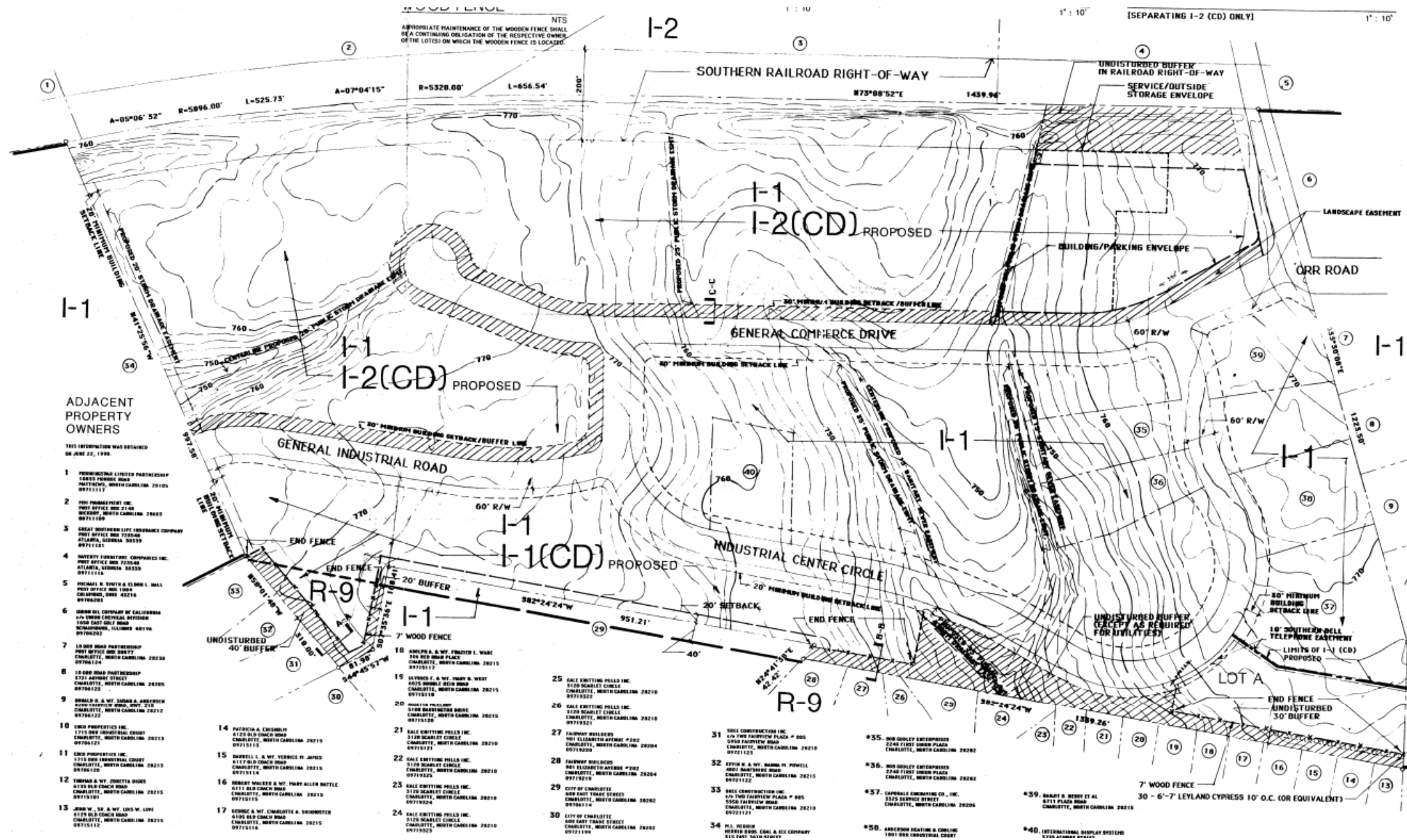
Appeal 2021-078

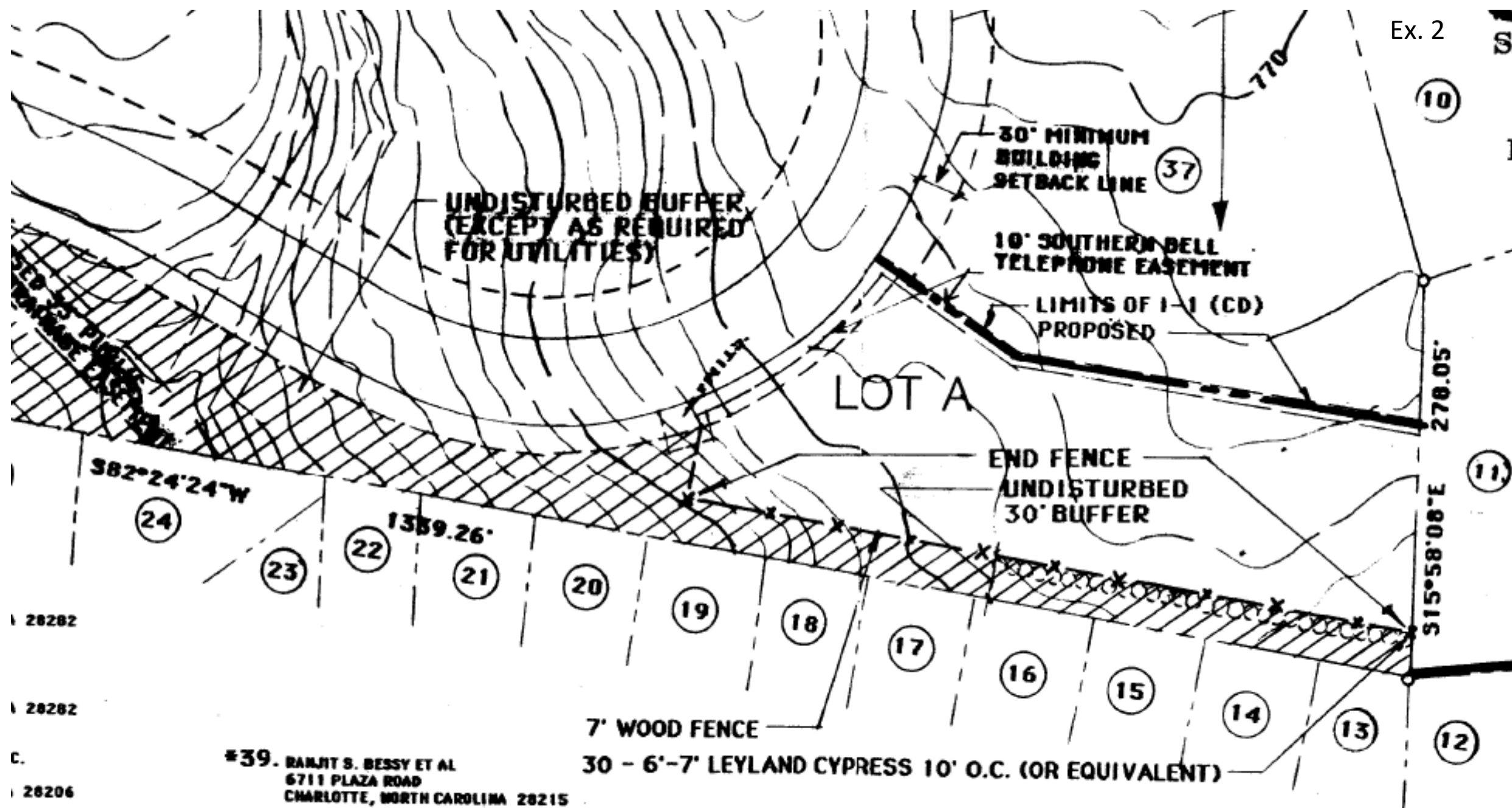
# ZBA Hearing: 21-078

Owner: Washburn 3100 INC

Presented by: David Murray

Address: 1700 Industrial Center Circle





\*39. RAJIT S. BESSY ET AL  
6711 PLAZA ROAD  
CHARLOTTE, NORTH CAROLINA 28215

# Appeal by adjacent owner

- Mrs. Gatewood purchased the property in 1988; Mr. Gatewood added to deed through marriage in 1998; Mr. Gatewood quitclaimed his interest in 2003.
- Adjacent owner is alleging that the 30' undisturbed buffer on the approved conditional rezoning plan is no longer in effect and that the project would be subject to a 100 foot buffer.
- A 100 foot buffer presumes that this property is part of the whole development.
- Issue with the adjacent owner's position is that if the property is part of the whole rezoned development, it necessarily has vested rights, as will be shown, and, as such, would be subject only to the 30' undisturbed buffer.
- If the Board determines that the property is no longer vested under the conditional plan, then the property must be considered alone and would only be subject to a 41.25' buffer with berm.
- Modern buffers are not undisturbed buffers.

## Ex. 3 – Aerial of appellant's property



# Interpretation by Zoning Administrator

- Common Law vested rights exist.
- 30' buffer all that is required under plan.
- Development was rezoned as part of a larger industrial project
- City Council determined what conditions were reasonable at time of adoption
- Property abutted residential as shown on the site plan and conditions were placed on the buffers that abutted residential properties
- Provides for uniform development within larger development

# Common Law Vest Rights

- “A party claiming a common law vested right in a nonconforming use of land must show: (1) substantial expenditures; (2) in good faith reliance; (3) on valid governmental approval; (4) resulting in the party's detriment.”

Walton N. Carolina, LLC v. City of Concord, 809 S.E.2d 164, 168, 257 N.C. App. 227, 232 (2017)

# Substantial Expenditures

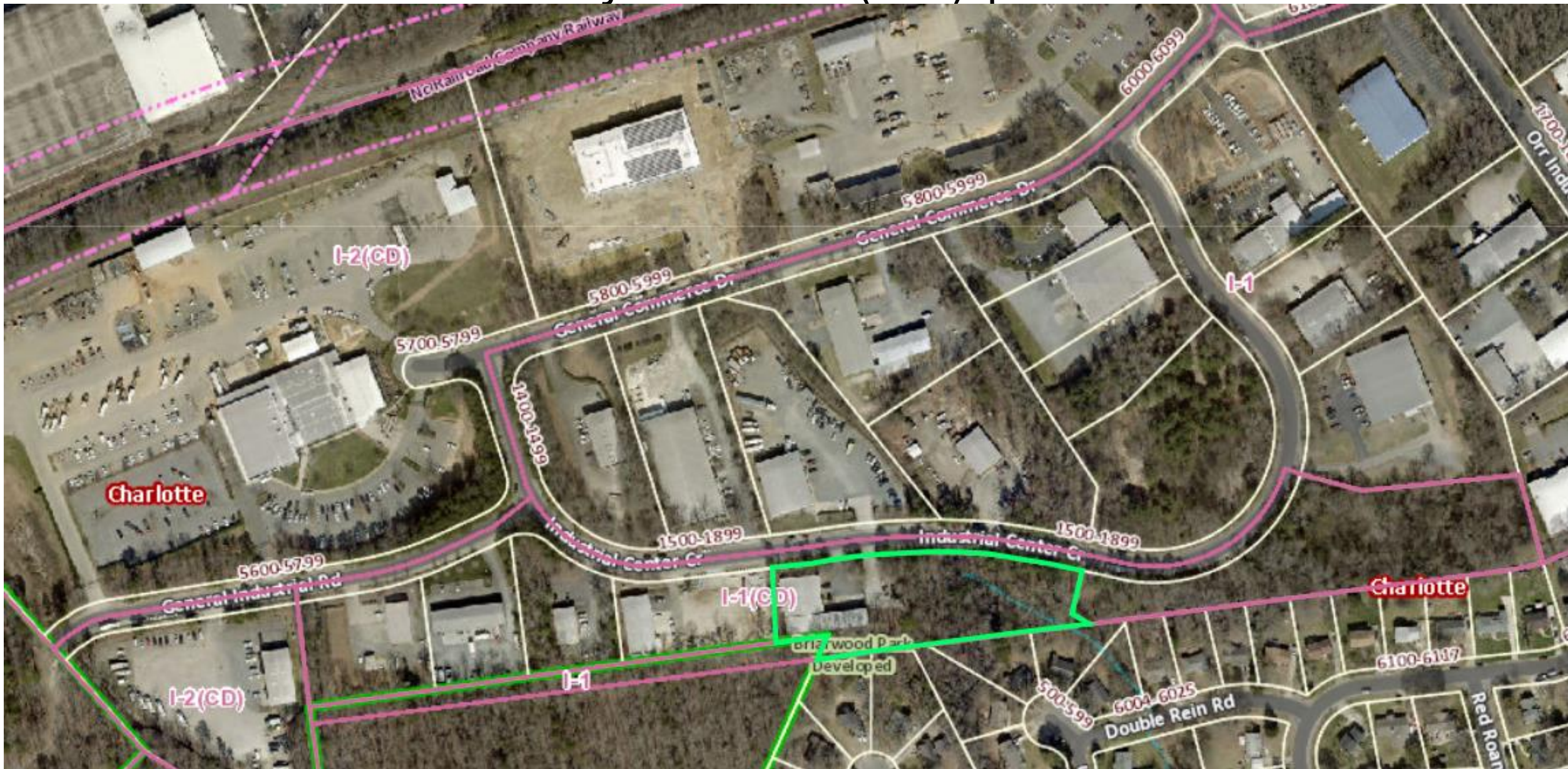
- What are they?
- “makes expenditures or incurs contractual obligations, substantial in amount, incidental to or as part of the acquisition of the building site or the construction or equipment of the proposed building for the proposed use”

*Town of Hillsborough v. Smith*, 170 S.E.2d 904, 909, 276 N.C. 48, 55 (1969)

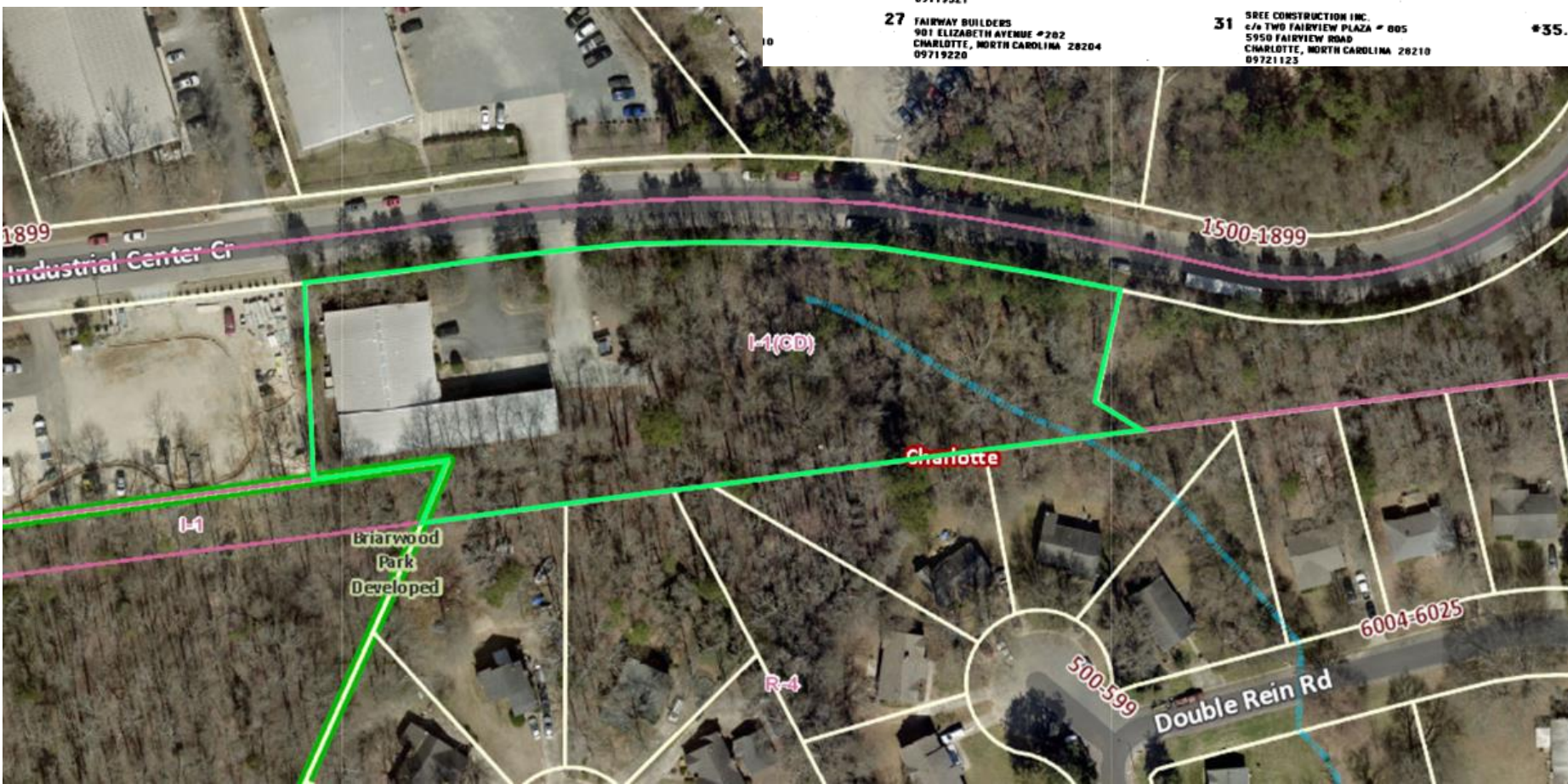
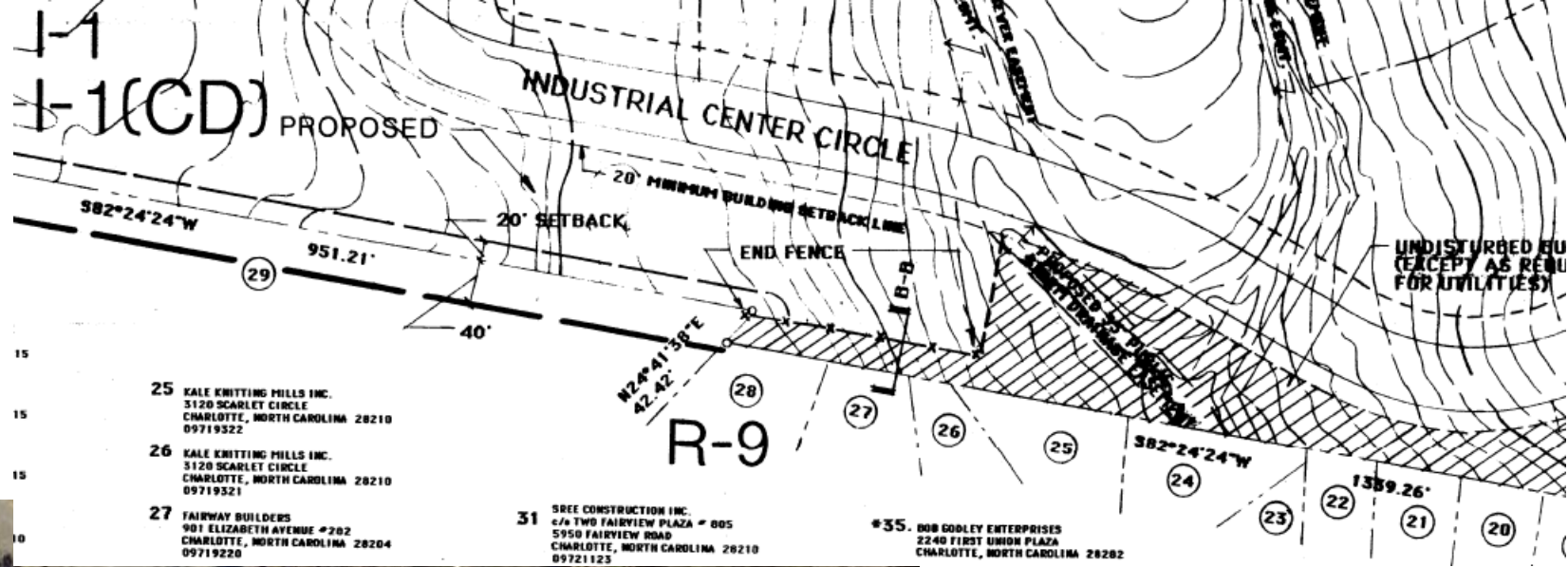
# Substantial Expenditures of Larger Development

- Roads, utilities, buildings, etc. Most of the larger development has actually been developed in reliance upon the approved rezoning.
- The adjacent I-1(CD) building was built in 2000.
- There is no 100' buffer on the adjacent lot.

## Ex. 4 – Aerial of adjacent I-1(CD) parcel



Ex. 5 - adjacent



# Substantial Expenditures for Owner

Ex. 6

- Purchase price: \$255,000

Costs of Development of 1700 Industrial Center Circle

Period from 10/1/2020 to 9/22/2021

Survey	4,900.00
Phase 1	1,750.00
Clearing of undergrowth	7,400.00
Engineering site plan fees	41,225.00
Building design and MEP engineer fees	23,000.00
Application fees	9,330.40
<hr/>	
TOTAL TO DATE	87,605.40

# In good faith reliance

- Did not know of any change that would have made the rezoning approval invalid.
- Unified development in rezoning plan with construction that had taken place after the statutory vesting period.
- City of Charlotte currently building on I-2(CD) lot in development.
- No 100' buffers being applied in other parts of the development.
- Engineer contacted planning department to confirm development plan still in place and to confirm buffer during due diligence.
- Design and sought approvals based upon conditional rezoning plan.

# On valid government approval

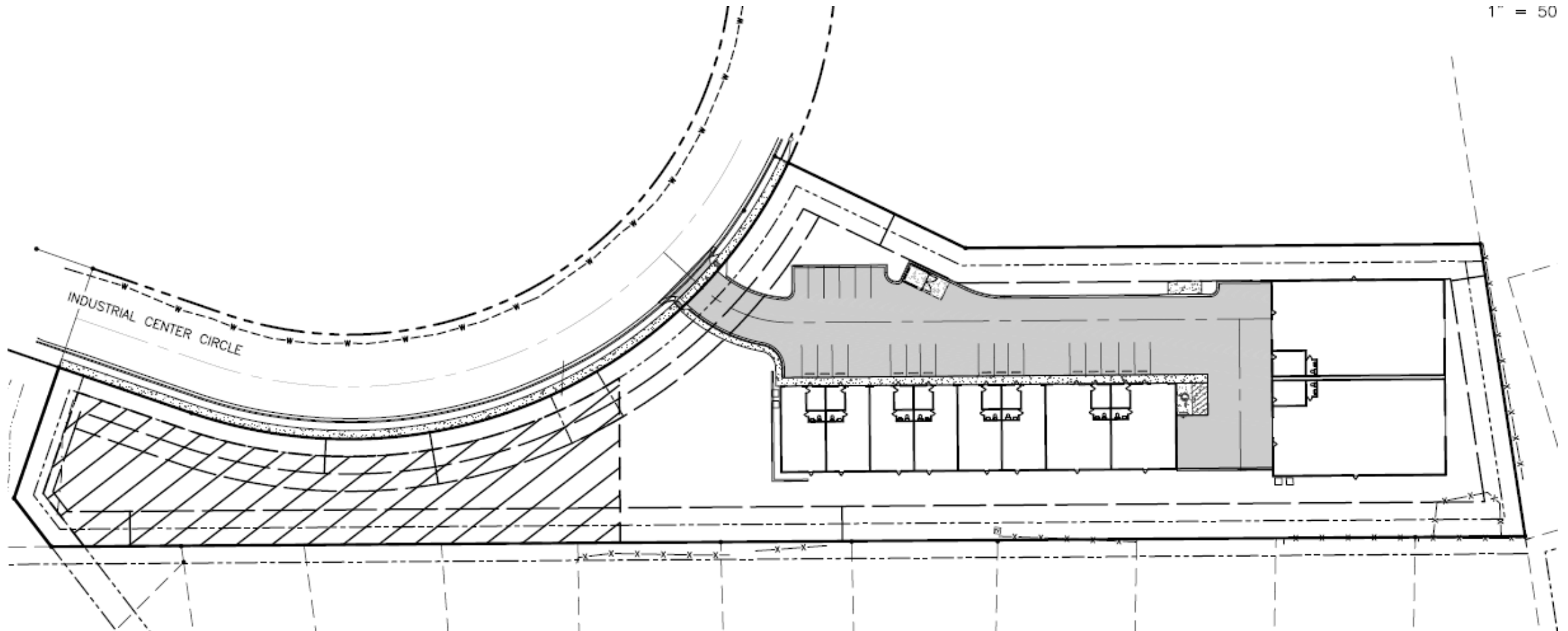
- The conditional zoning was valid, approved by City Council, and has been in place since 1992.
- Rezoned as part of a “master development plan.”
- Other parts of the development have been built.
- City has continued to rely upon the plan for administrative approvals.
- Other parts have 20’ buffer and some have 30’ buffer.
- No parts of the development have a 100’ buffer. Never designed for a 100’ buffer.
- Mr. Spencer’s interpretation is that the 30’ undisturbed buffer on the approved plan is still valid based upon the approved site plan.

# Resulting in party's detriment

- Interpretation against would necessitate this parcel being viewed as independent of the whole planned development. As such, a 41.25' buffer with berm would be required. All existing undisturbed trees would be removed.
- Either a 100' buffer or a 41.25' buffer would cause substantial impact to the development of the parcel. 100' would render it totally unbuildable and uneconomic.
- Increased buffer would impact the plans that have already been prepared for the buildable area on the site according to the approved site plan.
- The fair market value of the property is reduced with increased buffers.

# Proposed Development Plans

Ex. 7



# Proposed Building Plans

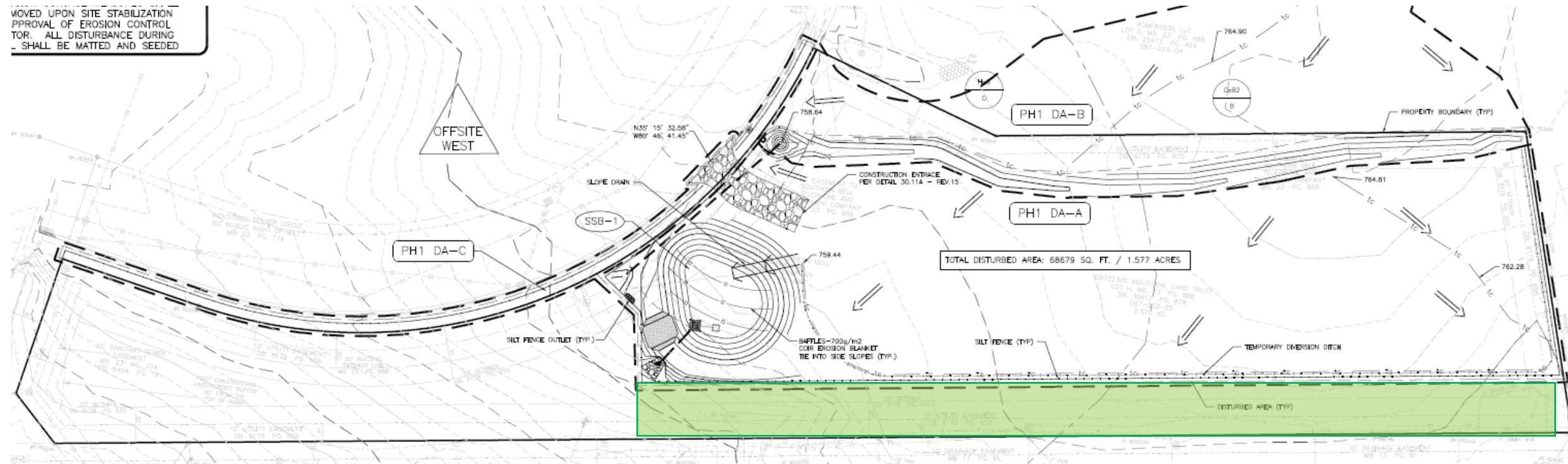
Ex. 8



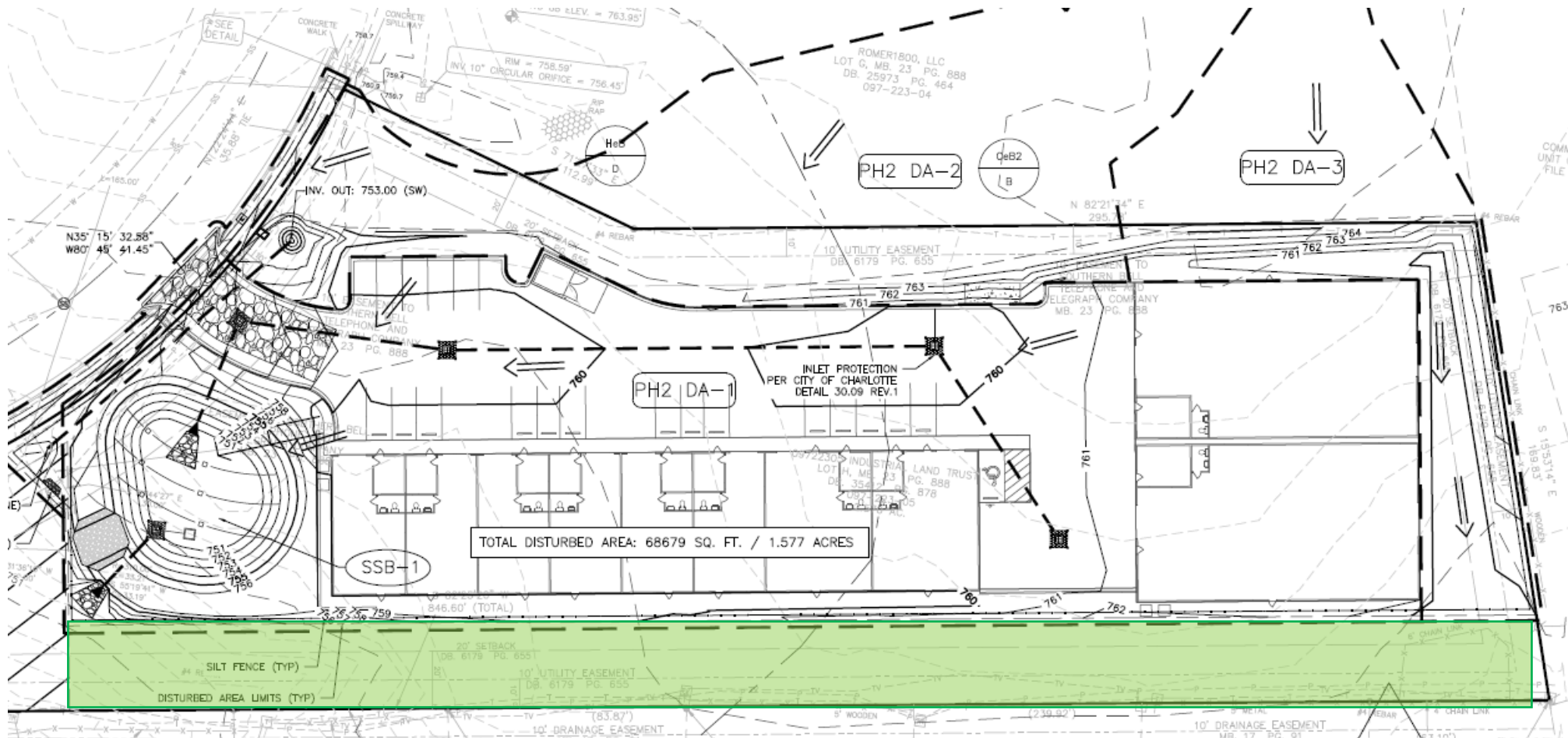
Example buildings

Ex. 9



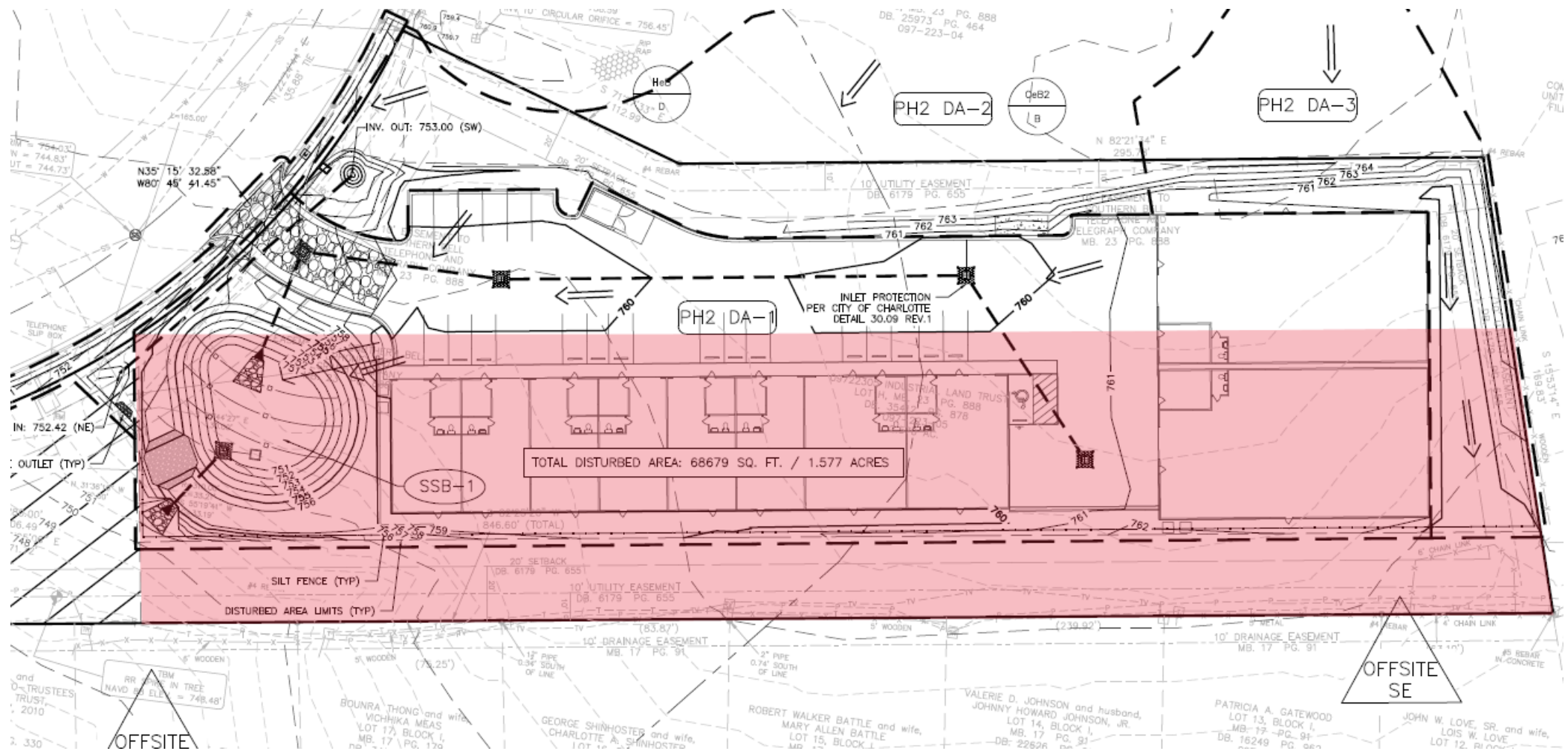
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## Ex. 11



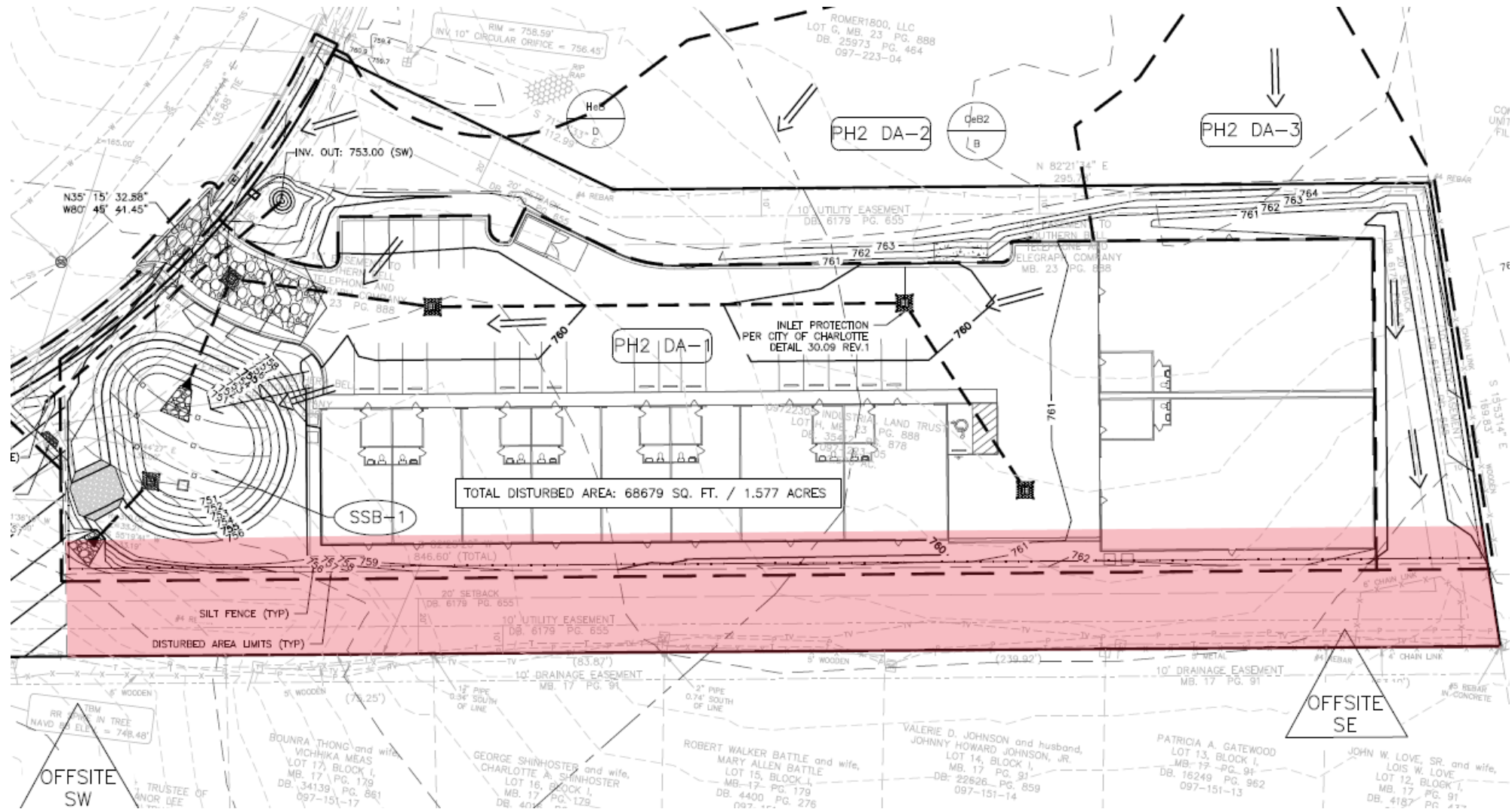
# With 100' buffer

# Ex. 12



With 41.25' buffer

Ex. 13



Adjacent  
Residential  
Sales

Ex. 14



1. 500 CRICKETWOOD LN	<a href="#">35777-268</a>	3/9/2021	\$268,000.00	4. 6101 OLD COACH RD	<a href="#">34139-861</a>	12/19/2019	\$155,000.00
	<a href="#">35231-633</a>	10/27/2020	\$177,500.00		<a href="#">23212-357</a>	12/27/2007	\$111,500.00
	<a href="#">35231-150</a>	10/26/2020	\$163,000.00		<a href="#">22402-600</a>	6/20/2007	\$73,500.00
	<a href="#">09268-078</a>	9/25/1997	\$93,500.00		<a href="#">22291-271</a>	5/30/2007	\$81,000.00
	<a href="#">09035-034</a>	4/29/1997	\$0.00		<a href="#">17283-371</a>	6/1/2004	\$115,000.00
	<a href="#">08494-566</a>	3/13/1996	\$15,000.00				
2. 6301 OLD COACH RD	<a href="#">36458-790</a>	8/26/2021	\$224,500.00	5. 6147 OLD COACH RD	<a href="#">34128-994</a>	12/16/2019	\$193,000.00
	<a href="#">33330-448</a>	3/5/2019	\$133,000.00		<a href="#">32446-106</a>	2/5/2018	\$160,000.00
	<a href="#">05753-360</a>	4/29/1988	\$59,500.00		<a href="#">32273-266</a>	11/15/2017	\$79,500.00
3. 6215 OLD COACH RD	<a href="#">34399-214</a>	3/24/2020	\$168,500.00	6. 6209 OLD COACH RD	<a href="#">33918-191</a>	10/4/2019	\$163,000.00
	<a href="#">31283-680</a>	10/26/2016	\$0.00		<a href="#">08590-603</a>	5/28/1996	\$0.00
	<a href="#">28455-332</a>	6/21/2013	\$76,000.00	7. 6011 DOUBLE REIN RD	<a href="#">31754-712</a>	4/27/2017	\$123,000.00
	<a href="#">18425-928</a>	3/2/2005	\$0.00		<a href="#">15405-624</a>	5/28/2003	\$0.00
	<a href="#">16727-65</a>	2/2/2004	\$0.00		<a href="#">14559-875</a>	12/18/2002	\$0.00
	<a href="#">08814-765</a>	11/8/1996	\$93,000.00		<a href="#">08731-537</a>	9/9/1996	\$86,000.00
					<a href="#">08403-969</a>	12/20/1995	\$15,000.00

# Adjacent Parcel 30' buffer

Ex. 15



# Questions/Comments?

- Thank you for your time and consideration.
- As the four elements of the common law vested rights have been met, we respectfully request that you uphold the decision of the zoning administrator.